

**TENNESSEE
COURT RULES
Annotated**

2021

Volume 2

Tennessee Code Annotated

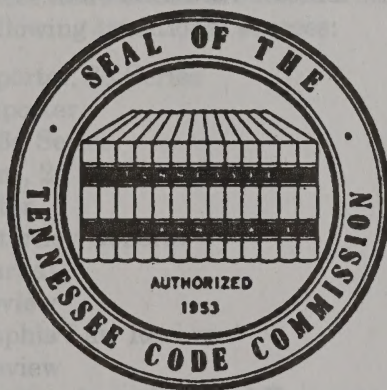
Court Rules Annotated

2021

Volume 2

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission



CHIEF JUSTICE JEFFREY S. BIVINS, CHAIR

ANASTASIA P. CAMPBELL

THE HONORABLE HERBERT SLATERY, III

JUSTICE CORNELIA A. CLARK

SUSAN SHORT JONES, ESQ.



LexisNexis®

Tennessee Code Annotated

Court Rules Annotated

LEXISNEXIS AND THE KNOWLEDGE BURST LOGO ARE REGISTERED TRADEMARKS, AND MICHIE IS A TRADEMARK OF REED ELSEVIER PROPERTIES INC., USED UNDER LICENSE. MATTHEW BENDER IS A REGISTERED TRADEMARK OF MATTHEW BENDER PROPERTIES INC.

COPYRIGHT © 2021

BY

THE STATE OF TENNESSEE

All rights reserved.

ISBN 978-1-66330-223-6 (Set)



Chief Justice James S. Butler, Chair
Honorable R. Campbell
The Honorable Herbert S. Sikes III
Honorable Dennis A. Clark
James S. Sikes, Esq.



LexisNexis

Preface

This Tennessee Court Rules Annotated 2021 Edition has been split into two volumes to facilitate the research and the use of this material. This 2021 Edition will be supplemented in November. This supplementation program will keep you up to date with current rules.

This volume was prepared by the editorial staff of the publisher.

The Tennessee Supreme Court has rule-making authority for all state courts. The effective date of rules is governed by § 16-3-404, which provides in part that rules must be approved by resolutions of both houses of the General Assembly before taking effect.

Rules received through May 14, 2021, are included in this volume.

The text of each section of the state and local rules printed and appearing in this replacement volume has been prepared from copies of these rules as supplied to the publisher by the applicable clerks, or from copies of rules and rule amendments supplied on the relevant court's website, as of the time of publication. Any errors or omissions or any inquiries concerning errors in these rules should be directed to the clerk for the court promulgating such rules.

For your convenience, each set of rules is followed by its own index.

This publication contains annotations reflecting decisions or articles posted to Lexis Advance. These annotations are taken from decisions or articles that will appear in the following traditional sources:

- South Western Reporter, 3d Series
- Supreme Court Reporter
- Federal Reporter, 3d Series
- Federal Supplement, 2d Series
- Bankruptcy Reporter
- Opinions of the Attorney General
- Tennessee Bar Journal
- Tennessee Law Review
- University of Memphis Law Review
- Vanderbilt Law Review
- Workers' Compensation Appeals Board Decisions

Suggestions, comments, or questions about the Tennessee Code Annotated are always welcome. You may call us toll free at (800) 833-9844, email us at customer.support@lexisnexis.com, or write Tennessee Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, Colorado 80921.

Visit our Internet home page at www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

June 2021

LEXISNEXIS

User's Guide

For information and suggestions for the use of the Tennessee Code Annotated and its editorial features, please consult the User's Guide published near the front of Tennessee Code Annotated Volume 1. Consult also the Supplement pamphlet to Volume 1 for updated or additional information pertaining to the User's Guide.

TENNESSEE	1
INDEX	131
RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF JUDICIAL CONDUCT	216
INDEX	283
RULES OF THE COURT OF APPEALS OF TENNESSEE	288
INDEX	301
RULES OF THE COURT OF CRIMINAL APPEALS OF TENNESSEE	303
INDEX	313
DAVIDSON COUNTY LOCAL RULES OF PRACTICE	315
INDEX	313
HAMILTON COUNTY LOCAL RULES OF PRACTICE	325
INDEX	377
KNOX COUNTY LOCAL RULES OF PRACTICE	381
INDEX	1043
SHELBY COUNTY LOCAL RULES OF PRACTICE	1051
INDEX	1171

TABLE OF CONTENTS

Volume 2

RULES OF THE SUPREME COURT OF THE STATE OF TENNESSEE	1
INDEX	731
RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF JUDICIAL CONDUCT	775
INDEX	783
RULES OF THE COURT OF APPEALS OF TENNESSEE	785
INDEX	801
RULES OF THE COURT OF CRIMINAL APPEALS OF TENNESSEE	803
INDEX	813
DAVIDSON COUNTY LOCAL RULES OF PRACTICE	815
INDEX	913
HAMILTON COUNTY LOCAL RULES OF PRACTICE	925
INDEX	977
KNOX COUNTY LOCAL RULES OF PRACTICE	987
INDEX	1043
SHELBY COUNTY LOCAL RULES OF PRACTICE	1051
INDEX	1171

301. Bachelor's Degree

302. Legal Education Degree Requirements

ARTICLE III--APPLICATIONS FOR ADMISSION BY EXAMINATION

SCORE

301. Application for Admission by Examination

302. Obligation to Answer

303. Date for Filing Application for Examination or Reexamination

304. Expiration of Application for Admission on Exam Score

305. Admission by Transferred Uniform Bar Examination Score

306. [Reserved]

307. [Reserved]

308. [Reserved]

309. [Reserved]

310. No Discretion to Waive Filing Dates

311. Applicants Requiring Non-Standard Testing Accommodations

ARTICLE IV--THE EXAMINATION

401. The Purpose of the Examination

402. The Structure of the Examination

403. The Dates and Places of Giving the Examination

RULES OF THE SUPREME COURT OF THE STATE OF TENNESSEE

[EFFECTIVE JANUARY 28, 1981]

TABLE OF CONTENTS

Rule

1. Scope.
2. [Repealed.]
3. Requirement of counsel to abridge the record on appeal.
4. Publication of opinions. — Not for citation designation — Precedential value and citation of unpublished opinions.
5. Research assistants.
6. Admission of attorneys.
7. Licensing of attorneys.

Preface

ARTICLE I—ADMISSION TO THE BAR OF TENNESSEE

- 1.01. Prerequisites to Engaging in Practice of Law or Law Business.
- 1.02. License; Certificate of Eligibility Required.
- 1.03. Criteria for Issuance of the Certificate of Eligibility.
- 1.04. Waiver of Examination.
- 1.05. Status of Persons Admitted.
- 1.06. Existing Licenses.
- 1.07. Tennessee Law Course.

ARTICLE II—EDUCATIONAL REQUIREMENTS FOR ADMISSION

- 2.01. Bachelor's Degree.
- 2.02. Legal Education Degree Requirements.

ARTICLE III—APPLICATIONS FOR ADMISSION BY EXAMINATION SCORE

- 3.01. Application for Admission by Examination.
- 3.02. Obligation to Amend.
- 3.03. Date for Filing Application for Examination or Reexamination.
- 3.04. Expiration of Application for Admission on Exam Score.
- 3.05. Admission by Transferred Uniform Bar Examination Score.
- 3.06. [Reserved.]
- 3.07. [Reserved.]
- 3.08. [Reserved.]
- 3.09. [Reserved.]
- 3.10. No Discretion to Waive Filing Dates.
- 3.11. Applicants Requiring Non-Standard Testing Accommodations.

ARTICLE IV—THE EXAMINATION

- 4.01. The Purpose of the Examination.
- 4.02. The Structure of the Examination.
- 4.03. The Dates and Places of Giving the Examination.

Rule

- 4.04. The Scope of the Examination.
- 4.05. Re-examination.
- 4.06. Effect of Taking Examination on Eligibility for Admission.
- 4.07. Grading the Examination and Score Expiration.

ARTICLE V—PERSONS ADMITTED IN OTHER JURISDICTIONS
SEEKING WAIVER OF EXAMINATION

- 5.01. Minimum Requirements for Admission Without Examination of Persons Admitted in Other Jurisdictions.
- 5.02. Additional Considerations.
- 5.03. Expiration of Application for Admission Without Examination.
- 5.04. Obligation to Amend.

ARTICLE VI—CHARACTER AND FITNESS INVESTIGATION

- 6.01. Character and Fitness Standard.
- 6.02. Investigatory Committees.
- 6.03. Investigating Procedures.
- 6.04. Duty of Candor and Failure or Refusal to Furnish Information.
- 6.05. False Information.
- 6.06. Certificate of Character and Fitness.

ARTICLE VII—FOREIGN-EDUCATED APPLICANTS

- 7.01. Eligibility to Take Examination.
- 7.02. Additional Information from Applicants Licensed in a Foreign Country.

ARTICLE VIII—COMMITMENT TO SERVE THE ADMINISTRATION OF
JUSTICE IN TENNESSEE

- 8.01. Evidence of Commitment to Administration of Justice.
- 8.02. [Reserved.]
- 8.03. [Reserved.]

ARTICLE IX—ISSUANCE OF LICENSE—EFFECTIVE DATE OF
ADMISSION

- 9.01. Certificate of Board.
- 9.02. Issuance of License.
- 9.03. Effective Date of Admission.
- 9.04. Duty of Applicant to Inform Board of Subsequent Events.
- 9.05. Disapproval by the Supreme Court.
- 9.06. Replacement License.
- 9.07. Denial of License.

ARTICLE X—SPECIAL OR LIMITED PRACTICE

- 10.01. Registration of In-House Counsel.
- 10.02. Approval of Experiential Learning Programs and Attorneys in Experiential Learning and Related Law School Programs.
- 10.03. Law Student Practice.
- 10.04. Practice before Admission by Examination Score.
- 10.05. Conditional Admission.
- 10.06. Temporary License of Spouse of a Military Servicemember.

Rule

- 10.07. Practice Pending Admission by Applicant Licensed in Another Jurisdiction.

ARTICLE XI—FEES

- 11.01. Schedule of Fees.
11.02. Payment Mandatory.
11.03. Refunds.

ARTICLE XII—ORGANIZATION AND POWERS OF BOARD

- 12.01. Composition of Board and Term.
12.02. Officers and Allocation of Responsibilities.
12.03. Official Seal.
12.04. Formal Actions; Quorum.
12.05. Policy and Procedure of the Board.
12.06. Docket of Proceedings.
12.07. Appointment and Duties of Executive Director.
12.08. Administrative Assistance.
12.09. Assistants to the Board.
12.10. Salaries.
12.11. Confidentiality of Board Records and Files.
12.12. No Power to Waive or Modify Rule of the Supreme Court.
12.13. Subpoena Power.
12.14. Counsel for Board.
12.15. Immunity.

ARTICLE XIII—FORMAL PROCEEDINGS BEFORE THE BOARD

- 13.01. Show Cause Orders.
13.02. Petitions to Board.
13.03. Hearings Before the Board.
13.04. Default.
13.05. Costs.
13.06. Decisions of Board.
13.07. Informal Disposition.
13.08. Motions and Other Matters Preliminary to Hearing.

ARTICLE XIV—REVIEW OF BOARD DECISIONS

- 14.01. Petition for Review.
14.02. Costs.
14.03. Exhaustion of Board Remedies.
14.04. No Review of Failure to Pass Bar Examination.

ARTICLE XV—SURRENDER OF LAW LICENSE.

- 15.01. Surrender of Law License.
15.02. Supreme Court Decision.
15.03. Effect of Order Accepting Surrender of License.

ARTICLE XVI—REINSTATEMENT OF LAW LICENSE

ARTICLE XVI—TENNESSEE-APPROVED LAW SCHOOLS

Rule

- 17.01. Tennessee Law Schools.
- 17.02. Functions of the Board in Review and Regulation of Tennessee-Approved Law Schools.
- 17.03. Site Evaluation of Tennessee-Approved Law Schools.
- 17.04. Action Concerning Apparent Noncompliance with Standards or Deficiencies in Mission.
- 17.05. Fact Finder.
- 17.06. Hearing on Show Cause Order.
- 17.07. Confidentiality of Approval and Evaluation Procedures.
- 17.08. Supreme Court Consideration of Board Recommendation for Imposition of Sanctions.
- 17.09. Maximum Period for Compliance with Remedial or Probationary Requirements.
- 17.10. Conflicts of Interest.
- 8. Rules of Professional Conduct.

Chapter 1. The Client-Lawyer Relationship

- 1.0. Terminology.
- 1.1. Competence.
- 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.
- 1.3. Diligence.
- 1.4. Communication.
- 1.5. Fees.
- 1.6. Confidentiality of Information.
- 1.7. Conflict of Interest: Current Clients.
- 1.8. Conflict of Interest: Current Clients: Specific Rules.
- 1.9. Duties to Former Clients.
- 1.10. Imputation of Conflicts of Interest: General Rule.
- 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.
- 1.12. Former Judge or Arbitrator.
- 1.13. Organizational Clients.
- 1.14. Client with Diminished Capacity.
- 1.15. Safekeeping Property and Funds.
- 1.16. Declining or Terminating Representation.
- 1.17. Sale of Law Practice.
- 1.18. Duties to Prospective Client.

Chapter 2. The Lawyer as Counselor, Intermediary, and Dispute Resolution Neutral

- 2.1. Advisor.
- 2.2. Lawyer Serving as an Intermediary Between Clients.
- 2.3. Evaluation for Use by Third Persons.
- 2.4. Lawyer as a Dispute Resolution Neutral.

Chapter 3. Advocate

- 3.1. Meritorious Claims and Contentions.
- 3.2. Expediting Litigation.

Rule

- 3.3. Candor Toward the Tribunal.
- 3.4. Fairness to Opposing Party and Counsel.
- 3.5. Impartiality and Decorum of the Tribunal.
- 3.6. Trial Publicity.
- 3.7. Lawyer as Witness.
- 3.8. Special Responsibilities of a Prosecutor.
- 3.9. Advocate in Non-Adjudicative Proceedings.

Chapter 4. Transactions with Persons Other than Clients

- 4.1. Truthfulness in Statements to Others.
- 4.2. Communication with a Person Represented by Counsel.
- 4.3. Dealing with an Unrepresented Person.
- 4.4. Respect for the Rights of Third Persons.

Chapter 5. Law Firms, Legal Departments, and Legal Service Organizations

- 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers.
- 5.2. Responsibilities of a Subordinate Lawyer.
- 5.3. Responsibilities Regarding Nonlawyer Assistance.
- 5.4. Professional Independence of a Lawyer.
- 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.
- 5.6. Restrictions on Right to Practice.
- 5.7. Responsibilities Regarding Law-Related Services.

Chapter 6. Public Service

- 6.1. Pro Bono Publico Service.
- 6.2. Accepting Appointments.
- 6.3. Membership in Legal Services Organization.
- 6.4. Law Reform Activities Affecting Client Interests.
- 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs.

Chapter 7. Information About Legal Services

- 7.1. Communication Concerning a Lawyer's Services.
- 7.2. Advertising.
- 7.3. Solicitation of Potential Clients.
- 7.4. Communication of Fields of Practice and Specialization.
- 7.5. Firm Names and Letterheads.
- 7.6. Intermediary Organizations.

Chapter 8. Maintaining the Integrity of the Profession

- 8.1. Bar Admission and Disciplinary Matters.
- 8.2. Judicial and Legal Officials.
- 8.3. Reporting Professional Misconduct.
- 8.4. Misconduct.
- 8.5. Disciplinary Authority; Choice of Law.
- 9. Disciplinary enforcement.
 - 1. Preamble
 - 2. Definitions
 - 3. Disciplinary Districts

Rule

4. The Board of Professional Responsibility of the Supreme Court of Tennessee
5. Ethics Opinions
6. District Committees
7. Disciplinary Counsel
8. Jurisdiction
9. Multijurisdictional Practice
10. Periodic Assessment of Attorneys
11. Grounds for Discipline
12. Types of Discipline
 - 12.1. Disbarment.
 - 12.2. Suspension.
 - 12.3. Temporary Suspension.
 - 12.4. Public Censure.
 - 12.5. Private Reprimand.
 - 12.6. Private Informal Admonition.
 - 12.7. Restitution.
 - 12.9. Practice Monitors.
13. Diversion of Disciplinary Cases
 - 13.1. Authority of Board.
 - 13.2. Types of Disciplinary Cases Eligible for Diversion.
 - 13.3. Limitation on Diversion.
 - 13.4. Approval of Diversion.
 - 13.5. Contents of Diversion Recommendation.
 - 13.6. Service of Recommendation on and Review by Respondent.
 - 13.7. Effect of Rejection of Recommendation by Respondent Attorney.
 - 13.8. Effect of Diversion.
 - 13.9. Effect of Failure to Complete the Practice and Professionalism Enhancement Program.
14. Probation
 - 14.1. Probation.
15. Initiation, Investigation, and Hearing
16. Complaints Against Board Members, District Committee Members, or Disciplinary Counsel
17. Immunity
18. Service
19. Subpoena Power, Witnesses and Pre-trial Proceedings
20. Refusal of Complainant to Proceed, Compromise, etc.
21. Matters Involving Related Pending Civil or Criminal Litigation
22. Attorneys Convicted Or Acknowledging Guilt of Crimes
 - 22.1. Notice.
 - 22.2. Acts Not Constituting Serious Crime.
 - 22.3. Serious Crime.
23. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution
24. Discipline by Consent
25. Reciprocal Discipline
26. Attorneys Failing to Comply with Tenn. Code Ann. §§ 67-4-1701 — 1710 (Privilege Tax Applicable to Persons Licensed to Practice Law)
27. Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated
28. Notice to Clients, Adverse Parties, and Other Counsel

Rule

- 28.1. Effective Date of Order.
- 28.2. Recipients of Notice; Contents.
- 28.3. Special Notice.
- 28.4. Duty to Maintain Records.
- 28.5. Return of Client Property.
- 28.6. Refund of Fees.
- 28.7. Withdrawal from Representation.
- 28.8. New Representation Prohibited.
- 28.9. Affidavit Filed with Board.
- 28.10. Reinstatement.
- 28.11. Publication of Notice.
- 29. Appointment of a Receiver when an Attorney Becomes Unable to Continue the Practice of Law
 - 29.2. Appointment of a Receiver Attorney.
 - 29.3. Duties and Authority of a Receiver Attorney.
 - 29.4. Protection of Client Information and Privilege.
 - 29.5. Protection of Client Files and Property.
 - 29.6. Fees and Expenses of the Receiver Attorney.
 - 29.7. Limitation of Liability.
 - 29.8. Employment of the Receiver as Attorney for a Client.
 - 29.9. Advance Designation of a Receiver or Successor Attorney.
 - 29.10. Effect on Pending Cases.
- 30. Reinstatement
 - 30.3. Reinstatement from Administrative Suspension or Inactive Status.
 - 30.4. Reinstatement from Disbarment or Disciplinary Suspension.
 - 30.5. Successive Petitions.
- 31. Expenses, Audit, Reimbursement of Costs
 - 31.1. Expenses.
 - 31.2. Accounting.
 - 31.3. Reimbursement of Costs.
- 32. Confidentiality
- 33. Appeal
- 34. Additional Rules of Procedure
- 35. Detection and Prevention of Trust Account Violations
 - 35.1. Maintenance of Trust Funds in Approved Financial Institutions; Overdraft Notification.
 - 35.2. Verification of Financial Institution Accounts.
- 36. Tennessee Lawyer Assistance Program
 - 36.1. Referrals to TLAP.
 - 36.2. Autonomy.
- 37. Suspension of Law License for Default on Student Loan or Service-Conditional Scholarship Program
 - 37.2. Notice of Default; Show Cause Order.
 - 37.3. Service of Show Cause Order.
 - 37.4. Response to Show Cause Order; Disposition.
 - 37.5. Term of Suspension; Notice of Compliance.
 - 37.6. Suspended Attorney Required to Notify Clients, Adverse Parties, and Other Counsel.
 - 37.7. Reinstatement.

Rule

37.8. Fees.

A. Annual Registration Statement

B. RECONCILIATION CHARTS

10. Code of Judicial Conduct.

1. A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.
 - 1.1. Compliance with the Law.
 - 1.2. Promoting Confidence in the Judiciary.
 - 1.3. Avoiding Abuse of the Prestige of Judicial Office.
2. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.
 - 2.1. Giving Precedence to the Duties of Judicial Office.
 - 2.2. Impartiality and Fairness.
 - 2.3. Bias, Prejudice, and Harassment.
 - 2.4. External Influences on Judicial Conduct.
 - 2.5. Competence, Diligence, and Cooperation.
 - 2.6. Ensuring the Right to Be Heard.
 - 2.7. Responsibility to Decide.
 - 2.8. Decorum, Demeanor, and Communication with Jurors.
 - 2.9. Ex Parte Communications.
 - 2.10. Judicial Statements on Pending and Impending Cases.
 - 2.11. Disqualification.
 - 2.12. Supervisory Duties.
 - 2.13. Administrative Responsibilities.
 - 2.14. Disability and Impairment.
 - 2.15. Responding to Judicial and Lawyer Misconduct.
 - 2.16. Cooperation with Disciplinary Authorities.
3. A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.
 - 3.1. Extrajudicial Activities in General.
 - 3.2. Appearances before Governmental Bodies and Consultation with Government Officials.
 - 3.3. Testifying as a Character Witness.
 - 3.4. Appointments to Governmental Positions.
 - 3.5. Use of Nonpublic Information.
 - 3.6. Affiliation with Discriminatory Organizations.
 - 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.
 - 3.8. Appointments to Fiduciary Positions.
 - 3.9. Service as Arbitrator or Mediator.
 - 3.10. Practice of Law.
 - 3.11. Financial, Business, or Remunerative Activities.
 - 3.12. Compensation for Extrajudicial Activities.
 - 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value.
 - 3.14. Reimbursement of Expenses and Waivers of Fees or Charges.
 - 3.15. Reporting Requirements.
4. A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT

Rule

ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

- 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.
- 4.2. Political and Campaign Activities of Judges and Judicial Candidates in Public Elections.
- 4.3. Activities of Candidates for Appointive Judicial Office.
- 4.4. Campaign Committees.
- 4.5. Judges and Judicial Candidates Seeking Nonjudicial Office.

10A. Judicial Ethics Opinions.

10B. Disqualification or Recusal of a Judge; Filing and Disposition of Motions and Appeal

1. Motion Seeking Disqualification or Recusal of Trial Judge of Court of Record.
2. Appeal From Trial Court's Denial of Disqualification or Recusal Motion.
3. Motion Seeking Disqualification or Recusal of Appellate Judge or Justice.
4. Motion Seeking Disqualification or Recusal of Judicial Officer Other Than Judge of Court of Record.
5. Right to File Ethical Complaint Unaffected.

APPENDIX

11. Supervision of the Judicial System.

VII. Courts to be Open; Substitute Judges.

12. First-Degree Murder Trial Reports and Appeals in Capital Cases.

1. Trial Judge's Report in First-Degree Murder Cases.
2. Appeal of Capital Case.
3. Setting Execution Date at Conclusion of State Post-Conviction Proceedings.
4. Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process.

FIRST-DEGREE MURDER REPORT

13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.

1. Right to counsel and procedure for appointment of counsel.
2. Compensation of counsel in non-capital cases.
3. Minimum qualifications and compensation of counsel in capital cases.
4. Payment of expenses incident to representation.
5. Experts, investigators, and other support services.
6. Review of claims for compensation and reimbursement of expenses.
7. Contracts for indigent representation.

Rule 13 Forms

13A. [Repealed.]

14. Withdrawal of Counsel for Indigent Party After Adverse Decision in Intermediate Appellate Court.

15. Reimbursement of Costs in Mental Health Proceedings.

16. Appointment and Compensation of Counsel for Indigent Persons in Parole Revocation Hearings.

17. Uniform Judgment Document.

Rule

- 17A. Order of Deferral (Judicial Diversion).
18. Local Rules of Practice in the Trial Courts of Tennessee.
19. Appearance *Pro Hac Vice* in Proceedings Before Tennessee Agencies and Courts by Lawyers Not Licensed to Practice Law in Tennessee.
20. Appearance in the Trial and Appellate Courts of Tennessee by Nonresident Lawyers Admitted to Practice in Tennessee but Having No Office in This State.
21. Rule for Mandatory Continuing Legal Education.
22. Appointment of Magistrates in Child Support Cases.
23. Certification of Questions of State Law from Federal Court.
24. Rules of Procedure Governing Petitions for Waiver of Parental Consent for Abortions by Minors.
Petition for Judicial Authorization of an Abortion without Parental Consent
25. Tennessee Lawyers' Fund for Client Protection.
26. Official Electronic Recordings of Court Proceedings.
 - 2.01. Use and Format of Electronic Recordings.
 - 2.02. Electronic Recordings — Official Record.
 - 2.03. Method of Identification.
 - 2.04. Duplicate Copies of Electronic Recordings.
 - 2.05. Exhibit List and Trial Log.
 - 2.06. Depositions.
 - 3.01. Trial Proceedings.
 - 3.02. Pre-Trial and Post-Trial Proceedings.
 - 3.03. Clerk's Preparation of Record.
 - 4.01. References to Electronic Recordings.
 - 4.02. Optional Appendix to Briefs.
 - 4.03. Transcription for Appellate Court.
27. [Repealed.]
28. Tennessee Rules of Post-Conviction Procedure.
29. Uniform Civil Affidavit of Indigency.
Uniform Civil Affidavit of Indigency
30. Media Guidelines.
31. Alternative Dispute Resolution — Mediation.

GENERAL PROVISIONS

1. Application.
2. Definitions.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 MEDIATIONS

3. Initiation/Order of Reference.
4. Selection of Rule 31 Mediators.
5. Reports in Rule 31 Mediations Conducted in Eligible Civil Actions.
6. Participation of Attorneys.
7. Confidential and Inadmissible Evidence.
8. Costs.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 MEDIATORS

9. Standards of Professional Conduct for Rule 31 Mediators.
10. Obligations of Rule 31 Mediators.
11. Proceedings for Discipline of Rule 31 Mediators.
12. Privilege and Immunity.
13. Compensation.

PROVISIONS REGARDING QUALIFICATIONS AND TRAINING OF RULE 31 MEDIATORS

14. Rule 31 Mediators.
15. Additional Obligations of Rule 31 Mediators.

PROVISIONS FOR ADMINISTRATION OF RULE 31

16. Alternative Dispute Resolution Commission.
- 31A. Alternative Dispute Resolution — Case Evaluation, Judicial Settlement Conference, Mini-Trial, Non-Binding Arbitration, and Summary Jury Trial.

GENERAL PROVISIONS

1. Application.
2. Definitions.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31A ADR PROCEEDINGS

3. Initiation/Order of Reference.
4. Selection of Rule 31A Neutrals.
5. Reports.
6. Participation of Attorneys.
7. Confidential and Inadmissible Evidence.
8. Costs.

PROVISIONS APPLICABLE TO ALL RULE 31A NEUTRALS

9. Standards of Professional Conduct for Rule 31A Neutrals.
10. Obligations of Rule 31A Neutrals.
11. Privilege and Immunity.
12. Compensation.

PROVISIONS REGARDING QUALIFICATIONS OF RULE 31A NEUTRALS

13. Rule 31A Neutrals in Rule 31A Non-Binding Arbitration.
10. Rule 31A Neutrals Presiding in Mini-Trials.
15. Rule 31 Case Evaluators.

PROVISIONS RELATIVE TO PARTICULAR RULE 31A ADR PROCEEDINGS

16. Judicial Settlement Conferences.
17. Non-Binding Arbitration.
18. Case Evaluation.
19. Mini-Trial.
20. Summary Jury Trial.
 - A. Standards of Professional Conduct for Covered Neutrals
1. Preamble.
2. General Standards and Qualifications.
3. General Standards and Qualifications.
4. The Dispute Resolution Process.
5. Self-Determination.
6. Impartiality.
7. Confidentiality.
8. Professional Advice.
9. Fees and Expenses.
10. Concluding an ADR Proceeding.
11. Training and Education.
12. Advertising.
13. Relationships With Other Professionals.
14. Advancement of Dispute Resolution.
32. Term of the Chief Justice.

Rule

33. Tennessee Lawyer Assistance Program.
 - 33.01. Establishment of Tennessee Lawyer Assistance Program (TLAP).
 - 33.02. TLAP Commission.
 - 33.03. Director of the Program.
 - 33.04. Volunteer Counselors.
 - 33.05. Services.
 - 33.06. Referrals.
 - 33.07. Referrals From Board of Professional Responsibility, Board of Judicial Conduct, Board of Law Examiners or Other Disciplinary Agencies.
 - 33.08. Local Impaired Lawyer Assistance Programs.
 - 33.09. Revolving Loan Fund.
 - 33.10. Confidentiality.
 - 33.11. Immunity.
 - 33.12. Facility.
 - 33.13. Program review.
34. Public Access to Court Records.
35. Standard Format for Appellate Court Opinions and Orders.
36. Standard Paper Size for Tennessee State Courts.
37. [Repealed.]
38. Divorcing Parent Education and Mediation Fund.
39. Exhaustion of Remedies.
40. Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.
- 40A. Appointment of Guardians Ad Litem in Custody Proceedings.
 1. Definitions.
 2. Applicability.
 3. Guardian Ad Litem Appointments.
 4. Appointment Order.
 5. Duration of Appointment.
 6. Role of Guardian Ad Litem.
 7. Access to Child and Information Relating to Child.
 8. Duties/Rights of Guardian Ad Litem.
 9. Participation in Proceeding.
 10. Expediting Custody Proceedings.
 11. Guardian Ad Litem Fees and Expenses.
 12. Appeals by Guardian Ad Litem.
 13. Effective Date.
41. Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

Preamble.

Applicability and Enforcement.

Terminology.

12. PRO BONO PUBLICO SERVICE
42. Standards for Court Interpreters.
43. Interest on Lawyers' Trust Accounts.
44. Regulation of Lawyer Intermediary Organizations.
45. Americans with Disabilities Act.
46. Electronic Filing.

Introduction.

Rule

1. General Provisions.
 - 1.01. Definitions.
 - 1.02. Application of the Rule.
2. Registered Users.
 - 2.01. Registered Users.
 - 2.02. Registration.
 - 2.03. Duty of Registered User to Update Contact Information.
 - 2.04. User Guide.
3. Filing and Service Procedures.
 - 3.01. Time and Effect of E-Filing.
 - 3.02. Format of Documents.
 - 3.03. Payment of Filing Fees.
 - 3.04. Signatures.
4. Electronic Service.
 - 4.01. Automatic Service by E-Filing System.
 - 4.02. E-Service of Documents Filed by the Court.
5. Effect of Technical Failure in E-Filing.
 - 5.01. Motion to File Document Nunc Pro Tunc.
 - 5.02. E-Filing System Outage.
- 46A. Electronic Service of Papers E-Filed Pursuant to Local Rules of Court.
47. Provision of Legal Services Following Determination of Major Disaster.
48. Assuming Jurisdiction Over Undecided Cases.
49. Continuity of Operation Plan for the Tennessee Appellate Courts.
50. Tennessee Access to Justice Commission.
- 50A. Special Initiatives to Improve Access to Justice.
 1. Legal Services by Pro Bono Emeritus Attorneys.
 - 1.01. Purpose.
 - 1.02. Definitions.
 - 1.03. Scope of Representation.
 - 1.04. Supervision and Limitations.
 - 1.05. Certification.
 - 1.06. Withdrawal of Certification.
 - 1.07. Discipline and Fees.
 - 1.08. Mandatory Continuing Legal Education.
51. Procedures in Workers' Compensation Appeals.
 1. Referral to Special Workers' Compensation Appeals Panel.
 2. Supreme Court's Discretionary Review.
 3. Supreme Court's Review Following Appeals Panel's Decision.
 4. Interlocutory & Extraordinary Appeals By Permission.
52. Forms Approved for Use in Tennessee Courts.
 - 1.01. Purpose.
 - 1.02. Definitions.
 - 1.03. Use of Court-Approved Forms.
 - 1.04. Alteration of Court-Approved Forms.
 - 1.05. Updating Court-Approved Forms.
53. Collaborative Family Law
 1. Introduction.
 2. Definitions.
 3. Applicability.
 4. Requirements for Collaborative Family Law Participation Agreement.

Rule

5. Beginning and Concluding Collaborative Family Law Process.
6. Proceedings Pending Before Court; Status Report.
7. Emergency Order.
8. Effect of Written Settlement Agreement.
9. Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm; Exception.
10. Exception from Disqualification for Representation of Low-Income Parties.
11. Governmental Entity as Party.
12. Disclosure of Information.
13. Standards of Professional Responsibility and Mandatory Reporting not Affected.
14. Appropriateness of Collaborative Law Process.
15. Family Violence.
16. Confidentiality of Collaborative Family Law Communication.
17. Privilege Against Disclosure of Collaborative Family Law Communication.
18. Waiver and Preclusion of Privilege.
19. Limits of Privilege.
20. Authority of Court in Case of Noncompliance.
21. Other Alternative Dispute Resolution Permitted.
22. Effective date.

APPENDICES

Appendix A.

Appendix B.

Compiler's Notes. The January 28, 1981, order of the Tennessee Supreme Court adopted these new Rules of the Supreme Court and rescinded all previous Supreme Court rules.

Cross-References. Places of supreme court sessions, T.C.A. § 16-2-102.

Supreme court rules of practice, T.C.A. § 16-3-401.

Times of supreme court sessions, T.C.A. § 16-2-103.

Rule 1. Scope. — The Tennessee Rules of Appellate Procedure, which became effective on July 1, 1979, shall govern all matters on appeal before this Court. All rules of this Court in conflict with or modified by the Tennessee Rules of Appellate Procedure are hereby superseded and modified by the Tennessee Rules of Appellate Procedure. The Tennessee Rules of Appellate Procedure shall be cited as T.R.A.P. or as Tenn. R. App. P. [As amended by order filed April 17, 2000, effective April 17, 2000.]

Cross-References. Approval of rules by general assembly, T.C.A. § 16-3-404.

Laws in conflict with rules nullified, T.C.A. § 16-3-406.

Publication of court rules in Code, T.C.A. § 16-3-405.

Law Reviews. Appellate and Post Conviction Relief in Tennessee (Ronald W. Eades), 5 Mem. St. U.L. Rev. 1.

The Tennessee Court System — Supreme Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 191.

Rule 2. Rule day and motion docket. [Repealed.] [Repealed by order filed and effective May 11, 2015.]

Compiler's Note. In its order [ADM2015-00857] filed May 11, 2015, the Supreme Court

provided that: "Rule 2, Rules of the Tennessee Supreme Court, provides that "The first Mon-

day of every month shall be rule day; and the clerk shall keep a rule docket, in which the clerk shall enter all orders under these rules." Rule 2 is obsolete because it no longer reflects the Court's and the Appellate Court Clerk's internal procedures. Accordingly, Rule 2 is

hereby repealed in its entirety (including the title of the rule). Rule 2 shall now be designated as "[Repealed]" in the published versions of the Rules of the Supreme Court. This amendment is effective upon the filing of this order."

Rule 3. Requirement of counsel to abridge the record on appeal. —

In determining the content of the record and the scope of the transcript of evidence and proceedings in the trial court, as provided in T.R.A.P. 24(a) and 24(b), counsel for appellant and appellee are required to abridge the record so that only such part of the pleadings, testimony and other parts of the record which bear upon or affect the rights of the parties on the issues that are involved on the appeal, are included in the record. In the discretion of the Supreme Court, costs accruing for failure of counsel to comply with this rule will be adjudged against the party whose counsel is in default.

Rule 4. Publication of opinions. — Not for citation designation — Precedential value and citation of unpublished opinions. —

(A)(1) As used in this rule, "publication" means publication in the official reporter (Southwestern Reporter 3d).

(2) Unless explicitly designated "Not For Publication," all opinions of the Tennessee Supreme Court shall be published in the official reporter. Concurring and dissenting opinions shall be published along with the majority opinion.

(3) Opinions of the Special Workers' Compensation Appeals Panels shall not be published unless publication is ordered by a majority of the Supreme Court.

(4) The Clerk of this Court will promptly file opinions of this Court. A copy of the opinions shall be provided to the Attorney General and Reporter upon filing.

(B) No opinion of the Court of Appeals or Court of Criminal Appeals shall be published in the official reporter until after the time for filing an application for permission to appeal has expired.

(C) If an application for permission to appeal is filed and granted, the opinion of the intermediate appellate court shall not be published in the official reporter, unless otherwise directed by the Tennessee Supreme Court.

(D) If an application for permission to appeal is filed and denied, the opinion of the intermediate appellate court may be published in the official reporter in accordance with the rules of the intermediate appellate court if the opinion meets one or more of the following standards of publication:

(i) the opinion establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a set of facts significantly different from those stated in other published opinions;

(ii) the opinion involves a legal issue of continuing public interest;

(iii) the opinion criticizes, with reasons given, an existing rule of law;

(iv) the opinion resolves an apparent conflict of authority, whether or not the earlier opinion or opinions are reported;

(v) the opinion updates, clarifies or distinguishes a principle of law; or

(vi) the opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or

judicial history of a provision of a constitution, statute, or other written law. See Court of Appeals Rule 11(b) and Court of Criminal Appeals Rule 19.1(a).

(E)(1) If an application for permission to appeal is hereafter denied by this Court with a “Not for Citation” designation, the opinion of the intermediate appellate court has no precedential value.

(2) An opinion so designated shall not be published in any official reporter nor cited by any judge in any trial or appellate court decision, or by any litigant in any brief, or other material presented to any court, except when the opinion is the basis for a claim of *res judicata*, collateral estoppel, law of the case, or to establish a split of authority, or when the opinion is relevant to a criminal, post-conviction or habeas corpus action involving the same defendant.

(3) From and after the effective date of this rule, the precedential and citation value applicable to intermediate appellate court decisions designated “Not for Citation,” shall also apply to intermediate appellate court decisions which have previously been designated, “Denied, Concurring in Results Only” (DCRO), or “Denied, Not for Publication,” (DNP).

(F) If no application for permission to appeal is filed, or if an application is filed but dismissed as untimely, publication of the intermediate appellate court opinion shall proceed in accordance with either Court of Appeals Rule 11 or Court of Criminal Appeals Rule 19.

(G)(1) An unpublished opinion shall be considered controlling authority between the parties to the case when relevant under the doctrines of the law of the case, *res judicata*, collateral estoppel, or in a criminal, post-conviction, or habeas corpus action involving the same defendant. Unless designated “Not For Citation,” “DCRO” or “DNP” pursuant to subsection (E) of this rule, unpublished opinions for all other purposes shall be considered persuasive authority. Unpublished opinions of the Special Workers’ Compensation Appeals Panel shall likewise be considered persuasive authority.

(2) Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.

(H) [Reserved.] [As amended by order filed and effective November 1 and November 10, 1999; by order filed and effective December 13, 2006; and by order filed and effective March 4, 2015.]

Compiler’s Notes. Rule 4(H)(I), Rules of the Tennessee Supreme Court, currently provides that “[a] copy of any unpublished opinion cited shall be furnished to the court and all parties by attaching it to the document in which it is cited.” Rule 4(H)(2) goes on to require that the copies provided must contain a notation indicating “whether or not an application for permission to appeal has been filed and, if filed, the date and disposition of the application.” On October 28, 2014, the Court filed an order stating that the Court was considering a proposed amendment to Rule 4(H) which would delete the requirement that copies of unpublished opinions be furnished to the court and all other parties, unless the unpublished opinion is not available on an internet-based electronic database or unless required by a local rule of

court. The order solicited public comments on the proposed amendment and set December 31, 2014 as the deadline for submitting such comments.

Numerous written comments — both supporting and opposing the proposed amendment — were submitted to the Court during the public-comment period. After fully considering all of the comments, the Court hereby amends Rule 4(H) as set out in the appendix to this order. Additionally, as reflected in the appendix, the Court also amends Rule 4(G) to correct an erroneous cross-reference. The amendments shall take effect upon the filing of this order.

The amendment to Rule 4(H)(1) and (2) promulgated by the Supreme Court in its order dated March 4, 2014, deleted H(1) and (2).

Cross-References. Delivery of supreme

court opinions — Time of publication, T.C.A. § 8-6-201.

Written opinions in supreme court, T.C.A. § 27-1-118.

Law Reviews. The Tennessee Court System — Supreme Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 191.

“What Opinions are Precedents?” Revisited (Donald F. Paine), 36 No. 1 Tenn. B.J. 29 (2000).

Attorney General Opinions. Court of appeals precedent, OAG 07-98, 2007 Tenn. AG LEXIS 100 (7/3/07).

NOTES TO DECISIONS

ANALYSIS

1. Unpublished Opinions.
2. Precedent.

1. Unpublished Opinions.

In a medical malpractice action, fact issues existed as to whether a consulting cardiologist had a physician-patient relationship with a decedent whom he never saw. In reaching that conclusion, the court cited an unpublished Michigan decision because its facts were closely analogous. *Kelley v. Middle Tenn. Emergency Physicians, P.C.*, 133 S.W.3d 587, 2004 Tenn. LEXIS 333 (Tenn. 2004).

In a broker's suit against a lessor seeking a commission under a contract, an unpublished opinion of the Tennessee supreme court could be disregarded under Tenn. Sup. Ct. R. 4(H)(1), (2). *Grubb & Ellis/Centennial, Inc. v. Gaedeke Holdings, Ltd.*, 401 F.3d 770, 2005 FED App. 152P, 2005 U.S. App. LEXIS 5062 (6th Cir. Tenn. 2005).

Trial court erred in relying on a previous case that bore the notation “concurring in results only” when deciding a declaratory action in which an oil company sought remediation expenses for a release of petroleum hydrocarbons from storage tanks; a case bearing the notation “concurring in results only” has no precedential value under Tenn. Sup. Ct. R. 4(F). *Texaco Ref. & Mktg. v. State Dep't of Env't & Conservation*, 185 S.W.3d 818, 2005 Tenn. App. LEXIS 611 (Tenn. Ct. App. 2005).

Because a case had been relied upon in subsequent cases, both state and federal, it was quite persuasive in the police officers' appeal of an order granting a city summary judgment in the officers' action alleging that the city violated Memphis, Tenn., City Charter § 67 by failing to promote them to the rank of captain after thirty years of service; the facts of the case the court of appeals relied upon were similar to those presented in the appeal, and that case held that § 67 did not create a guarantee of employment but it did provide for automatic promotion to captain at the completion of thirty years of service and provided for a captain's pension upon retirement. *Edwards v. City of Memphis*, 342 S.W.3d 12, 2010 Tenn. App. LEXIS 707 (Tenn. Ct. App. Nov. 12, 2010), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 375 (Tenn. App. 13, 2011).

2. Precedent.

Having determined that the interpretation of the statute in *Townes v. Sunbeam Oster Co.* is controlling authority for all purposes, the Tennessee Supreme Court answers the certified question as follows: a plaintiff may rely on the 90-day savings provision in order to add a previously known potential nonparty tortfeasor to an existing lawsuit even when the plaintiff knew the identity of the potential tortfeasor at the time of the filing of the plaintiff's original complaint but chose not to sue the potential tortfeasor. *Becker v. Ford Motor Co.*, 431 S.W.3d 588, 2014 Tenn. LEXIS 191 (Tenn. Mar. 7, 2014).

Rule 5. Research assistants. — The employment of research assistants (law clerks) for the members of the appellate judiciary is governed by Tenn. Code Ann. § 8-23-108 and § 8-23-109. The employment of research assistants also is governed by Tenn. Code Ann. § 16-3-804(b).

Additional qualifications and/or conditions of employment are as follows:

(a) Research assistants shall devote their full time, during regular working hours, to the performance of the official duties assigned to them by the judge or justice whom they serve.

(b) Research assistants shall not engage in the practice of law during the term of their employment, except as provided in paragraph (c). For the limited purpose of this rule, however, the term “practice of law” shall not include service as a research assistant.

(c) Notwithstanding the provisions of paragraph (b), a research assistant (“assistant”) may act pro se, may perform routine legal work incident to the

management of the personal affairs of the assistant or a member of the assistant's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the assistant's workplace, and does not interfere with the assistant's primary responsibility to the judge or justice whom the assistant serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);

(2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in any court;

(3) in the case of pro bono legal services, such work: (i) is done without compensation; (ii) does not involve the entry of an appearance in any court; (iii) does not involve a matter of public controversy, an issue likely to come before the assistant's court, or litigation against federal, state or local government; and (iv) the proposed services are reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards.

(d) Senior law students (those in their final year of law school) may be employed upon a part-time basis, with a commensurate apportionment of compensation.

(e) All full-time research assistants, as a condition of their entry upon their duties, will file with the Administrative Office of the Courts a certificate in the following form:

CERTIFICATE

I, _____, Research Assistant to Justice/Judge _____, certify:

a. that I have read and fully understand Rule 5 of the Tennessee Supreme Court;

b. that I will devote my full time, during regular working hours, to the performance of my official duties as Research Assistant;

c. that I will not engage in the practice of law during the term of my employment, except as permitted under Rule 5.

This is the ____ day of _____, 20____.

[Signature]

(f) For the purposes of paragraphs (a)-(c) of this rule, the term "research assistant" shall include any staff attorney employed by an appellate court. [As amended by orders entered February 9, 1984, October 1, 1984, July 7, 1995, September 11, 1995, February 17, 2000, May 26, 2009, and September 12, 2014.]

Rule 6. Admission of attorneys. — An applicant who has been approved for licensing under Rule 7 may seek admission to the bar of this Court by either:

(1) Appearing in open court and representing, through a reputable member of the bar, that he or she is a person of good moral character and that he or she has been issued a Certificate of Eligibility to be licensed to practice law under Rule 7 and the statutes of this state; or

(2) Filing with the Clerk of the Supreme Court an application for admission by affidavit. Such application shall contain:

(A) A personal statement by the applicant that he or she possesses all qualifications and meets all requirements for admission as set out in the preceding paragraph;

(B) A statement by two sponsors (who must be members of the Bar of this Court and must personally know the applicant) endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission and affirming that the applicant is of good moral and professional character. Upon timely application and for good cause shown, the Board of Law Examiners, in its discretion, may waive this requirement; and,

(C) A copy of the Certificate of Eligibility issued by the Board of Law Examiners pursuant to Rule 7, Section 9.01.

(3) The documents submitted by the applicant shall demonstrate that he or she possesses the necessary qualifications for admission. Upon the applicant's taking the oath or affirmation and paying the fee therefor, the Clerk shall issue a certificate of admission. The fee for admission to the Bar of this Court shall be fixed by the Court. Applications may be filed in the offices of the Clerk at Nashville, Knoxville, or Jackson.

(4) Each applicant for admission shall take the following oath:

"I, _____ do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Tennessee. In the practice of my profession, I will conduct myself with honesty, fairness, integrity, and civility to the best of my skill and abilities, so help me God."

(5) The foregoing oath of admission may be administered by one of the following judicial officials in Tennessee: (A) a Justice of the Supreme Court; (B) a Judge of the Court of Appeals; (C) a Judge of the Court of Criminal Appeals; (D) a Circuit Court Judge; (E) a Chancellor; (F) a Criminal Court Judge; (G) a General Sessions Court Judge; (H) a Judge of any other inferior court established by the General Assembly pursuant to Article VI, Section 1 of the Tennessee Constitution; (I) the Clerk of the Appellate Courts; (J) a Chief Deputy Clerk of the Appellate Courts; or (K) the Clerk (not including deputy clerks) of any of the courts of such trial judges listed above. The oath of admission also may be administered by a justice or judge of the court of last resort in any other state. [As amended by orders entered February 9, 1984, October 1, 1984, July 7, 1995; and April 18, 2002; and by orders filed December 10, 2009 and October 27, 2011; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed September 16, 2019, effective upon filing.]

Compiler's Notes. Supreme Court order dated September 7, 2018 provided that: "On April 19, 2018, this Court entered an order soliciting comments with regard to proposed revisions to Tennessee Supreme Court Rule 6, which would have required "new attorneys to complete a Tennessee Law Course within one year of admission to the Tennessee bar." The Court received many thoughtful comments and proposals from the Tennessee Board of Law Examiners, the Tennessee Bar Association, the Knoxville Bar Association, numerous University of Tennessee law professors, and several interested individuals."

"The Court expresses its appreciation for all of the responses, the overwhelming majority of which favored the adoption of a Tennessee Law Course as a preadmission requirement "to provide instruction in specific areas of Tennessee law not addressed by the Uniform Bar Exam." Similarly, the Tennessee Board of Law Examiners proposed that the course be adopted as a

preadmission requirement under Supreme Court Rule 7 instead of Supreme Court Rule 6. We agree that any relevant amendments should be addressed under Supreme Court Rule 7. Accordingly, it is ORDERED that the adoption of the Tennessee Law Course will be addressed further and released for comments in a separate proceeding concerning amendments to Supreme Court Rule 7."

Supreme Court order dated September 16, 2019 provided that: "Rule 6, Section 4 of the Rules of the Tennessee Supreme Court is hereby amended as set out in the Appendix to this Order. This amendment shall be effective immediately upon the filing of this Order."

Cross-References. Admission to practice in all state courts, T.C.A. § 23-1-104.

Occupation tax on attorneys, T.C.A. title 67, ch. 4, part 17.

Procedure for admission, T.C.A. § 23-1-108.

Law Reviews. Admission to the Bar: A Constitutional Analysis, 34 Vand. L. Rev. 655.

Rule 7. Licensing of attorneys.

In its order filed March 29, 2019, the Supreme Court provided that: "By Orders filed January 17, 2019, and February 15, 2019, the Court solicited public comment regarding proposed amendments to Tennessee Supreme Court Rule 7. The Court received comments from the Tennessee Board of Law Examiners and several individuals. In addition, the Tennessee Board of Law Examiners received feedback and proposals submitted by the Deans, Clinic Directors, and faculty members of law schools in Tennessee with respect to sections 10.02 and 10.03. The Court appreciates these efforts and important contributions."

"After due consideration, the Court hereby amends Rule 7 of the Rules of the Tennessee

Supreme Court in the form set out in the attached Appendix to this Order. The Rule shall be effective on the filing date of this Order. A law school's Experiential Learning Program that was previously approved under Rule 7 remains approved, and the law school does not need to reapply for approval under section 10.02."

In its order filed April 26, 2019, the Supreme Court provided that: "On March 29, 2019, the Court adopted amendments to Rule 7 of the Rules of the Tennessee Supreme Court. After additional consideration and review, the Court has made non-substantive corrections to the amended rule in the form set out in the attached Appendix to this Order."

PREFACE The Board of Law Examiners for the State of Tennessee (the "Board") is created as a part of the judicial branch of government by the Supreme Court of Tennessee under its inherent authority to regulate courts. The Supreme Court appoints the members of the Board and has general supervisory authority over the Board's actions. The Supreme Court controls admission to the practice of law, and acts on the basis of the Board's Certificate of Eligibility. [Amended by order filed and effective October 16, 2017; and amended by order filed and effective March 29, 2019.]

ARTICLE I—ADMISSION TO THE BAR OF TENNESSEE

Sec. 1.01. Prerequisites to Engaging in Practice of Law or Law Business. No person shall engage in the "practice of law" or the "law business" in Tennessee as defined in Tenn. Code. Ann. § 23-3-101 and Tenn. Sup. Ct. R. 9, § 10.3(e), except under the authority of the Supreme Court, unless the person:

- (a) has been:
 - (1) admitted to the bar of the Supreme Court in accordance with Tenn. Sup. Ct. R. 6; and
 - (2) issued a license by the Supreme Court in accordance with this Rule and after having been administered the oath in accordance with Tenn. Sup. Ct. R. 6 as set forth in this Rule; or
- (b) has been granted permission to engage in special or limited practice under sections 10.01, 10.02, 10.03, 10.04, 10.06, or 10.07 of this Rule; or
- (c) is practicing in compliance with Tenn. Sup. Ct. R. 8, RPC 5.5(c), Tenn. Sup. Ct. R. 8, RPC 5.5(d), or Tenn. Sup. Ct. R. 19 (pro hac vice). [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, effective Jan. 1, 2016; by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019.]

Compiler’s Notes. In its order dated October 16, 2018, the Supreme court provided that, “On April 19, 2018, this Court entered an order soliciting comments with regard to proposed revisions to Tennessee Supreme Court Rule 6, which would have required “new attorneys to complete a Tennessee Law Course within one year of admission to the Tennessee bar.” The Court received comments and proposals from the Tennessee Board of Law Examiners, the Tennessee Bar Association, the Knoxville Bar Association, and numerous individuals. In addition, the Tennessee Board of Law Examiners submitted a proposal for adopting the Tennessee Law Course as a preadmission requirement under Supreme Court Rule 7. On September 7, 2018, the Court entered an order soliciting additional comments with regard to proposed revisions to Supreme Court Rule 7. The deadline for submitting written comments was Friday, September 28, 2018.

“The Court expresses its appreciation for all of the responses, the overwhelming majority of which favored the adoption of a Tennessee Law

Course as a preadmission requirement for new applicants to the bar “to provide instruction in specific areas of Tennessee law not addressed by the Uniform Bar Exam.” After due consideration, the Court hereby amends the relevant provisions of Tennessee Supreme Court Rule 7 as set out in the attachment to this Order. Section 1.07 shall be effective January 1, 2019. All other provisions shall be effective immediately.”

Law Reviews. Sherman Antitrust Act — State Action Immunity — Bar Examiners’ Liability, 52 Tenn. L. Rev. 525 (1985).

Disciplinary Board Opinions. Ethical propriety of employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee. Formal Ethics Opinion 2002-F-91(a) (3/08/02).

Attorney General Opinions. Conduct of “public adjuster” may constitute unauthorized practice of law, OAG 05-076 (5/10/05).

Attorney General Opinion No. 05-076 does not conclude that the practice of public adjusting per se constitutes the unauthorized practice of law in Tennessee, OAG 05-133 (8/26/05).

NOTES TO DECISIONS

ANALYSIS

1. Readmission of Disbarred Attorney.
2. Regulation of Unauthorized Practice.

1. Readmission of Disbarred Attorney.

An attorney whose name is stricken from the roll of attorneys stands just as though he never had a license, and must seek readmission as an original applicant. *Cantor v. Grievance Comms. of Washington County*, 189 Tenn. 536, 226 S.W.2d 283, 1950 Tenn. LEXIS 396 (1950) (decided under former version of this rule).

2. Regulation of Unauthorized Practice.

The supreme court possesses not only the inherent supervisory power to regulate the

practice of law, but also the corollary power to prevent the unauthorized practice of law and, when circumstances warrant, to exercise original jurisdiction over matters concerning the unauthorized practice of law within the state. In *re Burson*, 909 S.W.2d 768, 1995 Tenn. LEXIS 509 (Tenn. 1995).

Although a parent may sue or defend on behalf of their minor child, a parent who is not “duly licensed” may not engage in the “practice of law” on behalf of their minor child. A claim asserted in a pleading by a person who is not entitled to practice law is a nullity. *Vandergriff v. Parkridge E. Hosp.*, 482 S.W.3d 545, 2015 Tenn. App. LEXIS 671 (Tenn. Ct. App. Aug. 21, 2015), appeal denied, *Vandergriff v. Parkridge*

East Hosp., — S.W.3d —, 2015 Tenn. LEXIS 1014 (Tenn. Dec. 11, 2015).

Sec. 1.02. License; Certificate of Eligibility Required. The Supreme Court shall grant a license evidencing admission to the bar of Tennessee only upon presentation of a Certificate of Eligibility issued by the Board under section 9.01 of this Rule. The applicant shall comply with Tenn. Sup. Ct. R. 6 and obtain the license on or before the first of the following to occur:

(a) expiration of bar examination or transferred Uniform Bar Examination (“UBE”) scores as provided in sections 3.05(b) and 4.07(c); or

(b) two years from:

(1) the date of the notice that the applicant successfully passed the bar examination; or

(2) the date of the notice of the Board’s approval of the application for admission under section 3.05, section 5.01, or section 10.06 of this Rule.

(c) All background investigations are invalid upon expiration of the two-year period under section 6.03. If the investigation expires after issuance of the Certificate of Eligibility but before licensing and expiration of scores, the applicant must request a supplemental background investigation as provided in section 6.03(b). [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective April 18, 2018; by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 1.03. Criteria for Issuance of the Certificate of Eligibility. The Board shall issue a Certificate of Eligibility under section 9.01 of this Rule only after determining that the applicant:

(a) is at least eighteen years old;

(b) has satisfied the educational requirements for admission specified by this Rule;

(c) has achieved the minimum score on the Uniform Bar Examination required in Tennessee for admission under section 3.01 or section 3.05, or is eligible for admission without examination in Tennessee as hereinafter provided in section 5.01, or section 10.06;

(d) has achieved a passing score on the Multistate Professional Responsibility Examination as provided in section 4.07(d);

(e) has demonstrated the reputation, character, honesty, respect for the rights of others, due respect for the law, and the fitness to practice law, that in the opinion of the Board indicates no reasonable basis for substantial doubts that the applicant will adhere to the standards of conduct required of attorneys in this State;

(f) has certified that he or she has read and is familiar with the Tennessee Rules of Professional Conduct;

(g) has completed the Tennessee Law Course as provided in section 1.07;

(h) has paid all fees for licensing and admission to this Board, the Clerk of the Supreme Court, and the Board of Professional Responsibility; and

(i) has evidenced a commitment to serve the administration of justice in this State. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective April 18, 2018; by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 1.04. Waiver of Examination. The requirement to pass the Tennessee bar examination or provide a passing UBE score may be waived for an applicant who has been admitted to practice in another state in the United States, the District of Columbia, or a U.S. Territory, provided that the applicant satisfies all requirements for admission without examination as specified in this Rule. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective April 18, 2018; and by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 1.05. Status of Persons Admitted. All persons admitted to the bar of Tennessee are by virtue of such admission: (a) officers of the courts of Tennessee, eligible for admission to practice in any state court in Tennessee, and entitled to engage in the “practice of law” or the “law business” as defined in section 1.01 of this Rule; and (b) subject to the duties and standards imposed from time to time on attorneys in this State. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019.]

NOTES TO DECISIONS

1. Statewide Standard of Care.

Intermediate appellate court properly reversed a trial court’s decision to grant a summary judgment for an attorney in a legal malpractice suit because the applicable standard of care of which experts must be familiar was a statewide standard. *Chapman v. Bearfield*, 207 S.W.3d 736, 2006 Tenn. LEXIS 990 (Tenn. 2006).

In legal malpractice suits, the applicable professional standard of care is a statewide standard because attorneys are licensed to practice throughout the state; therefore, experts who testify in legal malpractice cases must be familiar with the statewide standard. *Chapman v. Bearfield*, 207 S.W.3d 736, 2006 Tenn. LEXIS 990 (Tenn. 2006).

Sec. 1.06. Existing Licenses. Nothing in this Rule shall be construed as requiring the relicensing of persons holding valid licenses to practice in Tennessee as of the date of the adoption of this Rule [March 29, 2019]. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 1.07. Tennessee Law Course. The Tennessee Law Course is intended to provide instruction in specific areas of Tennessee law not addressed by the Uniform Bar Exam.

(a) The following applicants to the bar of Tennessee must successfully complete the Tennessee law course before an applicant is eligible for admission to the Tennessee bar:

- (1) Section 3.01, Admission by Examination,
- (2) Section 3.05, Admission by Transferred Uniform Bar Examination Score,
- (3) Section 5.01, Admission Without Examination, or
- (4) Section 10.06, Temporary License of Spouse of Military Service member.

(b) The Supreme Court shall determine the content of the Tennessee Law Course.

(c) The Board shall administer the Tennessee Law Course.

(d) The fee for the Tennessee Law Course shall be included in the Schedule of Fees promulgated by the Board of Law Examiners under section 11.01 of this Rule. The fee is in addition to fees charged for the application for admission to practice law. Applicants must pay the fee to the Board before receiving access to the Tennessee Law Course.

(e) The Tennessee Law Course shall be a digital-exclusive course that shall be reasonably accessible to applicants. The applicant shall ensure the adequacy of the applicant's hardware, software, and internet connection.

(f) The Board shall provide applicants with instructions regarding access to the Tennessee Law Course as follows:

(1) Applicants seeking admission under section 3.01 (by examination) shall receive instructions upon completion of the bar examination.

(2) Applicants seeking admission under section 3.05 (transferred UBE score), section 5.01 (without examination) or section 10.06 (spouse of military service member) will receive instructions upon approval of their application by the Board.

(g) The Tennessee Law Course must be successfully completed within one year of the date that the applicant completes all other requirements to be eligible for a Tennessee law license. Any applicant who successfully completes the Tennessee Law Course but does not complete all other requirements for eligibility to obtain a law license within such one year period must repeat the Tennessee Law Course before admission.

(h) The Tennessee Law Course is not continuing legal education. No fee under Rule 21, section 8.02 shall be imposed on the Board or any applicant.

(i) No person holding a valid Tennessee license as of the effective date of this Rule [March 29, 2019] shall be required to take the Tennessee Law Course. [Adopted by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019.]

ARTICLE II—EDUCATIONAL REQUIREMENTS FOR ADMISSION

Sec. 2.01. Bachelor's Degree.

(a) Any applicant seeking admission must have received a Bachelor's Degree or higher from a college on the approved list of the Southern Association of Colleges and Secondary Schools, or the equivalent regional accrediting association, or any accreditation agency imposing at least substantially equivalent standards before taking his or her first bar examination. As

part of the application for admission, an applicant shall provide evidence of the degree in the form required by the Board.

(b) To be eligible to take the exam, an applicant shall provide evidence of the degree, earned before the examination, in the form required by the Board.

(c) The Board in its discretion may waive the requirement of a degree from an accredited undergraduate school if the applicant has graduated with a Juris Doctor Degree (“J.D. Degree”) from either: (1) a law school accredited by the American Bar Association (hereafter “ABA”) or (2) a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule, and the applicant submits a request for waiver and provides the Board satisfactory evidence that his or her undergraduate education is substantially equivalent to an undergraduate degree awarded by a regional accrediting association. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; by order filed April 15, 1999, effective May 1, 1999; and by order filed March 15, 2010, effective March 15, 2010; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 2.02. Legal Education Degree Requirements.

(a) Any applicant seeking admission must have completed a course of instruction in and graduated with a J.D. Degree from a law school accredited by the ABA at the time of applicant’s graduation, or a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule at the time of the applicant’s graduation.

(b) To be eligible to take the examination, an applicant must cause to be filed as part of the application a certificate from the dean or supervising authority of the school of law in which the applicant is enrolled or from which the applicant graduated, certifying that either the school is accredited by the ABA or the school is a Tennessee law school that has been approved by the Board under section 17.01 of this Rule and that:

(1) the applicant has completed all the requirements for graduation, or

(2) the applicant will have the number of credit hours required for graduation by the date of the bar examination.

(c) Any applicant seeking admission by transferred UBE score under section 3.05, without examination under section 5.01, or as the spouse of a military servicemember under section 10.06 shall provide evidence of the J.D. Degree in the form required by the Board.

(d) An attorney who received a legal education in the United States or a U.S. Territory but is ineligible for admission because the law school attended was not accredited by the ABA or was a Tennessee law school not approved by the Board may be considered for admission by examination or transferred UBE score provided the attorney satisfies the following educational, licensing, and practice requirements:

(1) The attorney holds a J.D. Degree, which is based on in-person attendance, from a law school approved by an authority similar to the Tennessee Board of Law Examiners in the jurisdiction where the law school exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by approved law schools

located in Tennessee.

(A) The applicant shall bear the cost of the evaluation of his or her legal education, as determined and as required by the Board, and the applicant shall not be eligible to sit for the bar examination until the applicant's legal education is approved by the Board.

(B) In evaluating the education received the Board shall consider, but not be limited to, such factors as the similarity of the curriculum taken to that offered in law schools approved by the ABA and that the school at which the applicant's legal education was received has been examined and approved by other state bar associations examining the legal qualifications of non-ABA law school graduates; and

(2) The attorney has passed a bar examination equivalent to that required by Tennessee in the state in which the law school exists; and

(3) The attorney has been primarily engaged in the active practice of law, as defined in section 5.01(c) of this Rule, in one or more states or territories of the United States, or the District of Columbia, for three of the five years immediately preceding the date upon which the application is filed; and

(4) The attorney meets all other requirements contained in the Rules of the Supreme Court of Tennessee pertaining to Admission of Persons to Practice Law.

(e) No correspondence course will be accepted by the Board as any part of an applicant's legal education to meet the requirements of this Rule. Distance, on-line or other instruction that is not in person will be accepted as part of a curriculum only to the extent approved by the ABA for accredited law schools. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; and by order filed March 23, 2004; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

ARTICLE III—APPLICATIONS FOR ADMISSION BY EXAMINATION SCORE

Sec. 3.01. Application for Admission by Examination.

(a) Any applicant submitting an application for admission by examination shall provide evidence in the form and following the process established by the Board that the applicant:

(1) meets the educational requirements imposed under sections 2.01 and 2.02 of this Rule;

(2) meets the Character and Fitness Standard under section 6.01 required of all applicants for admission to practice law in this jurisdiction;

(3) is a member in good standing in all jurisdictions in which the applicant is admitted, if any;

(4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction; and

(5) has not engaged in the unauthorized practice of law in this or any other jurisdiction.

(b) An applicant for admission by examination shall:

(1) file an application for admission by examination in the manner estab-

lished by the Board and within the time limits prescribed by this Rule;

(2) submit a certificate of admission from the highest court of each jurisdiction in which the applicant is admitted;

(3) submit a certificate of good standing from each jurisdiction in which the applicant is admitted; and

(4) pay the application fee as adopted pursuant to section 11.01 of this Rule. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; and by order filed March 23, 2004; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 3.02. Obligation to Amend. Until an applicant is admitted to the Tennessee bar, or the application is denied by the Board or voluntarily withdrawn, the applicant is under a continuing obligation to update responses to any of the information requested in the application process. Whenever there is an addition or a change to the information previously provided to the Board, the applicant must amend his or her application by filing an amendment or supplemental application as prescribed by the Board. Applications that have been on file for two years or more must be supplemented every two years until such time as the Applicant is admitted, has been denied admission, or has withdrawn the application for admission. [Adopted by order filed and effective March 29, 2019.]

Sec. 3.03. Date for Filing Application for Examination or Reexamination. The application process to take the examination shall begin on March 1 for the July examination and October 1 for the February examination and shall be completed no later than May 20 for taking the July examination and December 20 for taking the February examination. In order for the Board to have sufficient time to determine each applicant's eligibility to sit for the bar examination, all documentation required to be submitted to the Board to complete the application process, including submitting the documents required for the background investigation required in section 6.03(b) of this Rule, must be submitted on or before the deadline, and all fees must be paid in full on or before the deadline. Original documents that must be mailed to the Board must be received on or before the deadline. Applicants who have not completed the application process by the deadline are ineligible to sit for the examination. The only recourse for failure to complete the application process is to reapply for the next examination. The Board shall list the items necessary for a complete application in the Board Policies and Procedures. [As amended by order entered April 18, 1985; by order entered June 22, 1988; and by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. March 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 3.04. Expiration of Application for Admission on Exam Score.

(a) An application for admission by examination, re-examination, or transferred UBE score expires and closes upon the earlier of:

(1) admission and issuance of a license;

(2) withdrawal of the application by the applicant;
(3) denial of a license under Section 9.05;
(4) thirty days after the entry of the final order denying the application in whole or in part on the failure of the applicant to meet the Character and Fitness Standard required of attorneys admitted to practice law, absent a petition under section 14.01 and then upon resolution of the petition by the Supreme Court;

(5) thirty days after the entry of the final order denying a transferred UBE score for failure to meet eligibility requirements, absent a petition under section 14.01 and then upon resolution of the petition by the Supreme Court;

(6) expiration of exam or UBE scores;

(7) six months after the last communication from the Board, following completion of the background investigation, and which remains unanswered by the applicant for admission by transferred UBE score; or

(8) three years after the last submitted application for examination or re-examination.

(b) To withdraw an application, applicant shall submit a notice of withdrawal of application and affirmatively state that the applicant is no longer seeking admission in Tennessee. [Adopted by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 3.05. Admission by Transferred Uniform Bar Examination Score.

(a) An applicant for admission who has taken the UBE in another jurisdiction may be admitted to the practice of law in this state by transferred UBE score, upon showing that the applicant:

(1) has taken the entire UBE in a single administration in another jurisdiction and earned a total UBE scaled score equal to or greater than the score required to be achieved by Tennessee examination applicants and that such score has not expired as provided in section 4.07(c);

(2) has requested transfer of the score from the jurisdiction where the score was achieved or from the National Conference of Bar Examiners directly to the Tennessee Board of Law Examiners;

(3) meets the educational requirements pursuant to sections 2.01 and 2.02;

(4) is a member in good standing in all jurisdictions in which applicant is currently admitted;

(5) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(6) meets the Character and Fitness Standard under section 6.01 required of all applicants for admission to practice law in this jurisdiction; and

(7) has not engaged in the unauthorized practice of law in this or any other jurisdiction.

(b) An applicant who has achieved a UBE scaled score equal to or greater than the score required to be achieved by Tennessee examination applicants that has expired pursuant to section 4.07(c), but is not more than five years from the date grades were released in Tennessee for the exam administration for which the score was earned, may apply for admission on transferred UBE score provided the attorney is licensed in another jurisdiction in the United

States and has been primarily engaged in the active practice of law, as defined in section 5.01(c) of this Rule, in one or more states or territories of the United States, or the District of Columbia, for three of the five years immediately preceding the date upon which the application is filed.

(c) An applicant for admission by transferred UBE score shall:

(1) file an application for admission on transferred UBE score, including character investigation information, in the manner established by the Board, including submission of all required documents in the appropriate format;

(2) submit a certificate of admission from the highest court of each jurisdiction to which the applicant has been admitted;

(3) submit a certificate of good standing from each jurisdiction to which the applicant has been admitted; and

(4) pay the application fee as adopted pursuant to section 11.01 of this Rule. [Adopted by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 3.06. [Reserved.]

Sec. 3.07. [Reserved.]

Sec. 3.08. [Reserved.]

Sec. 3.09. [Reserved.]

Sec. 3.10. No Discretion to Waive Filing Dates. Neither the Executive Director nor the Board shall have discretion to waive or extend the dates for filing applications to take the examination specified in section 3.03 of this Rule. An applicant aggrieved by an action of the Board denying an application under section 3.03 shall not be entitled to petition the Supreme Court for a review of said action. [Added by order entered April 18, 1985; and amended by order entered June 22, 1988; and by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 3.11. Applicants Requiring Non-Standard Testing Accommodations. The bar examination shall be administered to all eligible applicants in a manner that does not discriminate against applicants with non-standard testing needs. An applicant who is otherwise eligible to take the Tennessee bar examination may request a modification of the manner in which the examination is administered if such applicant is unable to take the examination under normal testing conditions. The Board shall adopt a policy regarding applicants requiring non-standard testing accommodations pursuant to section 12.05 of this Rule. An applicant requesting non-standard testing accommodations shall complete and submit the documents prescribed by the Board by the application deadline set forth in section 3.03 of this Rule, except when the disability first occurs after the filing deadline. Because the forms and procedures are detailed, requiring the applicant to attach statements from law

school officials and treating professionals, any applicant requesting non-standard testing conditions is encouraged to request, complete, and submit the application for admission by examination and the necessary request for non-standard testing and related forms to the Board as early as possible to permit an evaluation of the request. To the extent practicable, any accommodations requested shall be consistent with the security and integrity of the examination. The Board may transmit the application for non-standard testing or refer the applicant to an appropriate professional selected by the Board for assessment and recommendations regarding the accommodation to grant. By submitting a request for non-standard testing, the applicant agrees to the release of the application to an appropriate professional and agrees to appear for assessment, if requested to do so by the Board. [Added by order entered April 15, 1999, effective May 1, 1999; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016.]

ARTICLE IV—THE EXAMINATION

Sec. 4.01. The Purpose of the Examination. The purpose of the examination is to enable applicants to demonstrate to the Board that they possess the knowledge, skills and abilities basic to competence in the profession. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 4.02. The Structure of the Examination. — The Board shall test applicants by administering the UBE prepared by the National Conference of Bar Examiners which consists of six Multistate Essay Examination questions, two Multistate Performance Test questions, and the 200 multiple choice question Multistate Bar Examination. The Board may contract with the National Conference of Bar Examiners or others to provide test materials. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed April 15, 1999, effective May 1, 1999; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective April 18, 2018.]

Sec. 4.03. The Dates and Places of Giving the Examination. — The examination shall be given in February and July of each year at any one or more of the following places: Memphis, Nashville, Chattanooga and Knoxville, provided an examination is held at least once a year in each of the three grand divisions. The Court, in its discretion, may substitute another location in the same grand division for a city named in the preceding sentence. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; and amended by order filed July 11, 2012, effective July 11, 2012; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016.]

Sec. 4.04. The Scope of the Examination. The examination may include, but not be limited to, the following subjects: Business Associations, Civil

Procedure, Conflicts of Law, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Real Property, Secured Transactions, Torts, and Trusts and Estates. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; ; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 4.05. Re-examination. An applicant who is unsuccessful on the examination may apply for re-examination by completing the application process under section 3.01 and paying the required fee. After the deadline for completion of the application process, the Board, in its discretion, will determine whether an applicant who has failed the bar examination will be permitted to take another examination. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 4.06. Effect of Taking Examination on Eligibility for Admission. — The fact that an applicant is allowed to take the examination shall not preclude further inquiries, investigation or proceedings with respect to the other criteria for admission under this Rule. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016.]

Sec. 4.07. Grading the Examination and Score Expiration.

(a) The Board shall continue to maintain procedures which assure that the identity of each applicant in the grading process is not known to any person having responsibility for grading or determining whether the applicant passes or fails until the grades of all applicants have been finally determined.

(b) The minimum bar examination score required for a successful examination will be adopted as a statement of policy and approved by the Supreme Court pursuant to section 12.05 of this Rule.

(c) Bar examination scores earned in Tennessee, whether by means of the former Tennessee bar examination or the UBE, are valid to determine eligibility for licensing for three years after the date grades are released. The scores expire after three years. A UBE score transferred to Tennessee is valid for three years from the date grades were released in Tennessee for the exam administration for which the score was earned unless the UBE score can be used for admission under section 3.05(b). A UBE score that was earned five or more years from the date grades were released in Tennessee for the exam administration for which the score was earned is not valid for admission to Tennessee.

(d) In order for an applicant by examination or transferred UBE score to be determined eligible for licensing pursuant to section 9.01, a score equal to or greater than that required by Tennessee on the Multistate Professional Responsibility Examination (“MPRE”) must be achieved within two years of successfully completing the Tennessee bar examination or earning a qualifying UBE score; provided, however, that an applicant who:

(1) is licensed by examination in another state in the United States, the District of Columbia, or a U.S. Territory;

(2) provides certification that the license is active and in good standing; and

(3) achieved a score equal to or greater than the score required on the MPRE two or more years before successful completion of the Tennessee bar examination may provide proof of that earlier score to satisfy the MPRE requirement. It is the responsibility of the applicant to cause MPRE score reports to be furnished to the Board. The minimum MPRE score will be adopted as a statement of policy and approved by the Supreme Court pursuant to section 12.05 of this Rule. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

ARTICLE V—PERSONS ADMITTED IN OTHER JURISDICTIONS SEEKING WAIVER OF EXAMINATION

Sec. 5.01. Minimum Requirements for Admission Without Examination of Persons Admitted in Other Jurisdictions.

(a) **Requirements.** An applicant who meets the requirements of (1) through (7) of this paragraph may be admitted to the practice of law in this jurisdiction without examination (comity). The applicant shall:

(1) meet the educational requirements imposed under sections 2.01 and 2.02 of this Rule;

(2) have been admitted by bar examination to practice law in one or more states or territories of the United States, or the District of Columbia;

(3) have been primarily engaged in the active practice of law, as defined below, in one or more states or territories of the United States, or the District of Columbia, for five of the seven years immediately preceding the date upon which the application is filed;

(4) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(5) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(6) establish that the applicant meets the Character and Fitness Standard under section 6.01 required of all applicants for admission to practice law in this jurisdiction; and

(7) submit an application under paragraph (e) of this section before establishing an office or other systematic and continuous presence in this jurisdiction for the practice of law pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(b)(1).

(b) **Diploma Privilege.** An applicant who was admitted and licensed to practice in another state pursuant to a “diploma privilege,” which exempts an applicant from taking a bar examination, and who has not been admitted by examination or transferred UBE score in any other state in the United States, the District of Columbia, or a U.S. Territory in which the applicant is in good standing, may seek a waiver of subsection (a)(1) by filing a petition with the Board as provided in section 13.02, setting forth the reasons why the applicant

should be admitted to practice law in Tennessee. The petition shall include information upon which the Board can assess the applicant's reputation, character, knowledge, skills and abilities. The Board shall then conduct a hearing in response to the petition, according to the guidelines set forth in section 13.03 of this Rule. After considering the totality of the proof presented, the Board shall make a recommendation to the Supreme Court either for approval or denial of the petition or for such other action as the Board may deem appropriate. Any applicant whose petition for waiver of subsection (a)(1) is denied by the Board may file a petition for review in the Supreme Court pursuant to the procedures set forth in section 14.01.

(c) **Active Practice of Law.** (1) For the purposes of this Rule, in addition to the definitions of "Practice of Law" and "Law Business" in section 1.01 of this Rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

- (A) full-time private or public practice as a licensed attorney;
- (B) teaching law full-time at a law school approved by the ABA;
- (C) service as a judicial law clerk or staff attorney; and
- (D) service as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, or duly registered In-House Counsel or Military Spouse.

(2) For the purposes of this Rule, in addition to the definitions of "Practice of Law" and "Law Business" in section 1.01 of this Rule, the "active practice of law" may be construed in the Board's discretion as being actively engaged in other full-time employment requiring interpretation of law and application of legal knowledge if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed pursuant to a provision similar to section 10.04 or section 10.07 of this Rule in advance of bar admission in a state or territory of the United States or the District of Columbia be accepted toward the durational requirement. The Board shall consider such evaluative criteria as time devoted to legal work, the nature of the work, whether legal training or a law license was a prerequisite of employment, and other similar matters.

(3) For work to meet the requirement of "active practice of law," the lawyer must have been licensed, in active status, and in good standing in at least one jurisdiction at the time the work was performed, unless the work was performed pursuant to paragraph (c)(1)(B).

(d) **Unauthorized Practice of Law.** For purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(e) **Admission Without Examination Application and Fees.** Any applicant seeking admission without examination to the practice of law in Tennessee shall:

- (1) file an application for admission without examination, including character investigation information, in a manner established by the Board,

including all required supporting documents;

(2) submit a certificate of admission from the highest court of each jurisdiction to which applicant has been admitted;

(3) Submit a certificate of good standing from each jurisdiction to which applicant has been admitted; and

(4) pay the application fee as adopted pursuant to section 11.01 of this Rule.

(f) An applicant under this section who establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law shall register for practice pending admission under section 10.07 unless the practice of law meets an exception under Tenn. Sup. Ct. R. 8, RPC 5.5. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order entered June 30, 2000; by order filed April 29, 2003; by order filed December 17, 2003; by order filed February 15, 2006; and by order filed January 24, 2011; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective May 31, 2017; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 5.02. Additional Considerations. In determining whether an applicant satisfies the requirements of section 5.01 of this Rule, the Board shall consider any evidence submitted by the applicant in an effort to demonstrate that the applicant possesses the knowledge, skill and abilities basic to competence in the profession. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 5.03. Expiration of Application for Admission Without Examination.

(a) An application for admission without examination (comity) expires and closes upon the earlier of:

(1) admission and issuance of a license;

(2) withdrawal of the application by the applicant;

(3) denial of a license under Section 9.05;

(4) thirty days after the entry of an order denying the application in whole or in part for failure of the applicant to meet the Character and Fitness Standard required of attorneys admitted to practice law, absent a petition under Section 14.01 and then upon resolution of the petition by the Supreme Court;

(5) thirty days after the entry of the final order denying the application for admission without examination (comity) for failure to meet eligibility requirements absent a petition under Section 14.01 and then upon resolution of the petition by the Supreme Court; or

(6) six months after the last communication from the Board, whether sent by mail or electronically, which remains unanswered by the applicant.

(b) To withdraw an application, an applicant shall submit a notice of withdrawal of application and affirmatively state that the applicant is no longer seeking admission in Tennessee. [Adopted by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 5.04. Obligation to Amend. Until an applicant is admitted to the Tennessee bar, or the application is denied by the Board or voluntarily withdrawn, the applicant is under a continuing obligation to update responses to any of the information requested in the application process. Whenever there is an addition or a change to the information previously provided to the Board, the applicant must amend his or her application by filing an amendment or supplemental application as prescribed by the Board. An applicant whose application has been on file for two years or more and that has not expired as provided in section 5.03 must submit an application for supplemental investigation to the NCBE every two years until such time as the Applicant is admitted, has been denied admission, or has withdrawn the application for admission. [Adopted by order filed and effective August 6, 2020.]

ARTICLE VI—CHARACTER AND FITNESS INVESTIGATION

Sec. 6.01. Character and Fitness Standard.

(a) An applicant shall not be admitted if the Board finds reasonable doubt as to that applicant's reputation, character, honesty, respect for the rights of others, fitness to practice law, and adherence to and obedience to the Constitution and laws of Tennessee and the United States and concludes that such applicant is not likely to adhere to the duties and standards of conduct imposed on attorneys in this State. Any conduct which would constitute grounds for discipline if engaged in by an attorney in this State shall be considered by the Board in making its evaluation of the character of an applicant.

(b) The Board may adopt statements of policy to implement the application of the foregoing standard. [As amended by order entered June 22, 1988; by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; and by order entered May 15, 2014, effective May 15, 2014; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 6.02. Investigatory Committees.

(a) In order to assist the Board in conducting character investigations of applicants, the Supreme Court shall appoint one or more investigating committees within each disciplinary district established under Rule 9. Each committee shall consist of a sufficient number of members so that each member has a reasonable number of interviews each year. The Board will adopt a policy establishing the reasonable number of interviews per member as well as the number of members for each committee. Attorneys who teach in any capacity in any of the State's ABA accredited or state-approved law schools are ineligible to serve as members of the Investigatory Committees. The Board may recommend to the Court the creation of additional committees or the increase in membership of any committee.

(b) The members of each investigating committee shall be appointed from time to time by the Supreme Court and shall serve at the pleasure of the Court for terms of up to five years, except as provided in paragraph (c) below. Members may be reappointed to serve a second five-year term. Members of an investigating committee may be recommended by the President or Board of Directors of the local bar association or associations in the district, the President or Board of Governors of the Tennessee Bar Association, members of the Board, or members of the investigatory committee in the district in which the vacancy exists.

(c) The Supreme Court shall select each committee chair. The chair shall be responsible for the administration of the work of the committee. Committee chairs may serve up to three consecutive five-year terms.

(d) The Executive Director shall provide an annual report to the Supreme Court in June listing the names of the members of each committee and the names of each committee chair, as well as a report of recommendations from the Board regarding the size of any committee. [As amended by order entered June 22, 1988; by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; by order filed April 15, 1999, effective May 1, 1999; by order filed June 21, 2002; and by order entered May 15, 2014, effective May 15, 2014; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 6.03. Investigating Procedures.

(a) Each application for admission with examination or without examination shall be referred first to a member of the Board for preliminary review for the purpose of:

- (1) detecting any deficiencies in the application; and
- (2) determining whether any additional information is needed with respect to any aspect of the application.

(b) As part of the character and fitness requirement for licensing, each applicant, other than an applicant pursuant to section 10.01 of this Rule, is required to have a current completed background investigation conducted by the National Conference of Bar Examiners ("NCBE"). It is the responsibility of each applicant to make the request to the NCBE for a background investigation and pay the required fee directly to the NCBE. In the event an applicant has not been licensed within two years of submission of the original background investigation, the applicant must request a supplemental investigation at that time and every two years thereafter, until the applicant is licensed or the application is withdrawn or denied.

(c) The Executive Director shall transmit the application and the results of the background investigation, if available at the time of the interview, for each applicant for admission by examination, re-examination, or transferred UBE score who is not licensed and in good standing in at least one other jurisdiction in the United States to the chair of the appropriate investigating committee. The Board may transmit the application and results of the background investigation, if available at the time of the interview, for any applicant who is licensed and in good standing in another jurisdiction in the United States. The

chair shall assign applications to committee members for review, interview and investigation.

(d) The investigating committee member to whom the application has been assigned shall review the application and such other information as may be transmitted by the Executive Director and shall conduct such investigation as appears to be appropriate. Each applicant referred to a committee shall be interviewed in person by a member of that committee. In conducting such investigations, the investigating committee member may take statements from the applicant and from such other persons as may be considered appropriate.

(e) On the completion of the investigation, the investigating committee member shall report his or her findings to the Board, in the form directed by the Board, and shall recommend fully, recommend with reservations or not recommend the applicant for licensing and admission. [Adopted by order entered June 22, 1988; and amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; by order filed September 11, 2001; by order filed March 23, 2004; and by order entered May 15, 2014, effective May 15, 2014; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 6.04. Duty of Candor and Failure or Refusal to Furnish Information.

(a) Each applicant for admission to the bar has a duty to be candid and to make full, careful and accurate responses and disclosures in all phases of the application and admission process. Each applicant must respond fully to all inquiries. It is not acceptable for an applicant to give either an incomplete or misleading description of past events reflecting on the applicant's qualifications for admission to the bar.

(b) The Board or any individual member may request any applicant to furnish additional information:

- (1) To supplement or explain answers to any question on the application;
- (2) As to the applicant's character **or fitness to practice law**;
- (3) As to the educational qualifications of the applicant, including information with respect to schools attended by the applicant;
- (4) As to the experiences of the applicant; and
- (5) As to such other matters as may be considered germane to the provisions of this Rule.

(c) The failure or refusal by any applicant to answer fully any question on the application or to furnish information or submit to examination as required by the application or pursuant to the provisions of this Rule shall be sufficient cause for the Board to refuse to allow such applicant to take the examination or to be admitted.

(d) The Board or any individual member, as part of the character investigation of an applicant, may request an applicant to submit to a drug **or alcohol screening test or be referred to the Tennessee Lawyers Assistance Program (TLAP) for evaluation under Tennessee Supreme**

Court Rules 33.05(E)(3). Failure or refusal to submit to the drug or alcohol screening test or comply with TLAP recommendations for evaluation under Rule 33.05 shall be sufficient cause for the Board to deny such applicant a license. [Adopted by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 6.05. False Information.

(a) The giving of false information or the making of false statements on the application or to the Board shall be sufficient cause for the Board to refuse to allow such applicant to take the examination or to be admitted.

(b) The Executive Director, the Board, or any individual member who has reason to believe that any person who has been admitted may have given false information or made false statements to the Board, may report the information to Disciplinary Counsel of the Board of Professional Responsibility. [Adopted by order filed and effective March 29, 2019.]

Sec. 6.06. Certificate of Character and Fitness.

(a) Recommendation of Character from Law School. An applicant seeking admission to practice law in Tennessee under sections 3.01 or 3.05 must:

(1) execute an appropriate release form permitting school officials from each law school applicant attended to furnish information to the Board relevant to the character and fitness of the applicant; and

(2) cause to be submitted to the Board a certificate from the dean or supervising authority of the law school from which the applicant graduated and from each law school applicant attended indicating that to the best of its knowledge and belief the applicant has demonstrated such reputation, character, honesty, respect for the rights of others, due respect for the law, and fitness to practice law sufficient to indicate no reasonable basis for substantial doubt that the applicant would adhere to the standards of conduct required of attorneys in this State and that the law school has provided full and complete information requested by the Board regarding the character and fitness of the applicant.

(b) Applicants Licensed in Another Jurisdiction. (1) If an applicant seeking admission to the bar has been previously admitted to another jurisdiction, a certificate of good standing from the highest court of each jurisdiction to which applicant has been admitted must accompany the application to the Board.

(2) Without waiving the requirement of proof of good character and fitness to practice law as provided in paragraph (a), above, the Board, in its discretion and for exceptional circumstances shown by the applicant, may waive the requirement of a certificate of good standing from the highest court of each jurisdiction to which applicant has been admitted. The Board shall not waive the requirement for a certificate of good standing for the highest court of each jurisdiction to which an applicant has been admitted for an applicant under section 10.01. [Added by order entered December 15, 2000, effective January 13, 2001; and amended by order filed April 2, 2001; by order filed May 16, 2001; by order filed March 23, 2004; by order filed April 29, 2005; and by order entered May 15, 2014, effective May 15, 2014; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

ARTICLE VII—FOREIGN-EDUCATED APPLICANTS

Sec. 7.01. Eligibility to Take Examination.

(a) An applicant who has completed a course of study in and graduated from a law school in a foreign jurisdiction, which law school was then recognized and approved by the competent accrediting agency of such jurisdiction, may qualify, in the discretion of the Board, to take the bar examination or for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of sections 2.01 and 2.02 of this Rule. The applicant shall submit a comprehensive evaluation that includes a course-by-course evaluation, determination of equivalency, plus authentication of transcripts (“Foreign-Education Report”) from a Credential Evaluation Service that is a member of the National Association of Credential Evaluation Services to enable the Board to determine the applicant’s eligibility for such admission.

(b) In the alternative, an applicant who has completed a course of study in and graduated from a law school in a foreign jurisdiction, which law school was then recognized and approved by the competent accrediting agency of such jurisdiction, may qualify, in the discretion of the Board, to take the bar examination or for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that the applicant:

(1) has been awarded, by a law school fully accredited by the ABA or a Tennessee law school approved by the Board under section 17.01 of this Rule, an LL.M. Degree in the United States in a degree program that meets the following requirements:

(A) The degree program certifies to the Board, on such form prescribed by the Board, that the foreign-educated lawyer received his or her LL.M. degree from a law school that is accredited by the ABA or is a Tennessee law school approved by the Board under section 17.01 of this Rule;

(B) The degree program prepares students for admission to the Bar and for effective and responsible participation in the legal profession in the United States; and

(C) The courses for the LL.M. for the Practice of Law in the United States were taught in English and in the United States or its territories and the applicant attended the courses on site at the ABA-accredited or Tennessee approved law school. The LL.M. program may be full or part-time but, if part-time, the applicant must have completed the LL.M. program within thirty-six months; and

(2) has been admitted to practice in a foreign jurisdiction and is in good standing at the bar of the foreign jurisdiction, as evidenced by a certificate from the highest court or agency of such foreign jurisdiction having authority over admission to the practice of law, and has engaged in the active practice of law in the foreign jurisdiction, as defined in section 5.01(c) of this Rule, for at least five of the eight years before applying to take the Tennessee bar. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed May 29, 2009, and by order filed June 12, 2009, effective August 1, 2010; and by order filed July 21, 2011, effective

September 1, 2011; amended by order filed December 21, 2015, effective January 1, 2016; amended by order filed and effective January 26, 2018; and amended by order filed and effective March 29, 2019.]

Law Reviews. Constitutional Protection of Aliens, 40 Tenn. L. Rev. 235.

NOTES TO DECISIONS

1. Construction.

Tennessee Supreme Court intended the words “in residence” to mean physically in residence at an approved law school, and the Court did not consider the American Bar Association (ABA) Standards, nor did the Court intend for the “in residence” provisions of the ABA Standards to apply; while the school’s distance-learning program might fulfill all ABA requirements for accreditation, the program did not meet the “in residence” requirement of the rule. *Sungkook Chong v. Tenn. Bd. of Law Exam’rs*, 481 S.W.3d 609, 2015 Tenn. LEXIS 944 (Tenn. Dec. 4, 2015).

Read in the context of the first two compo-

nents of the rule, the words “in addition,” used in the third component of the rule, mean that the minimum of 24 credit hours in residence at a law school approved by the American Bar Association must be earned in addition to the applicant’s law degree; the attorney could not meet that requirement because the very credit hours upon which he based his “in residence” argument were credit hours he used to earn his law degree from Handong International Law School, and the board did not err in denying his application to take the Tennessee bar examination on this ground. *Sungkook Chong v. Tenn. Bd. of Law Exam’rs*, 481 S.W.3d 609, 2015 Tenn. LEXIS 944 (Tenn. Dec. 4, 2015).

Sec. 7.02. Additional Information from Applicants Licensed in a Foreign Country. Any applicant licensed to practice in a foreign country desiring admission in Tennessee shall be required to pass the examination and shall supplement the application with the following documents:

(a) a certified copy of the record or license of the court or agency which admitted the applicant to practice law in such country; and

(b) at least three letters from attorneys or judges in such foreign country certifying that the applicant is in good standing at that bar, or was in good standing at that bar when the applicant left that foreign country. [As amended by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

ARTICLE VIII—COMMITMENT TO SERVE THE ADMINISTRATION OF JUSTICE IN TENNESSEE

Sec. 8.01. Evidence of Commitment to Administration of Justice.

The requisite commitment to serve the administration of justice in Tennessee subject to the duties and standards imposed on attorneys in this State shall be evidenced by a statement by each applicant for admission by examination, transferred UBE score, without examination, or temporary admission under section 10.06, that the applicant agrees to abide by the duties and standards imposed from time to time on attorneys in this State. [As amended by order entered July 1, 1985; and by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992; by order filed March 23, 2004; and by order filed December 10, 2009; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 8.02. [Reserved.]

Compiler's Notes. Former Tenn. Sup. Ct. R. 7, § 8.02, concerning the waiver of statement of

intent, was deleted by order filed December 10, 2009.

Sec. 8.03. [Reserved.]

Compiler's Notes. Former Tenn. Sup. Ct. R. 7, § 8.03, concerning interpretation of residence and domicile requirements, was deleted

by order filed August 23, 1993, and entered nunc pro tunc effective October 19, 1992.

ARTICLE IX—ISSUANCE OF LICENSE—EFFECTIVE DATE OF ADMISSION

Sec. 9.01. Certificate of Board.

(a) Upon the completion of all requirements for licensing as provided in section 1.03, the Board, acting through the Executive Director, shall certify to the Supreme Court that an applicant is eligible for admission and issue to the applicant a “Certificate of Eligibility for Admission” (“Certificate of Eligibility”). The Board shall promptly notify the Clerk of the Supreme Court and the Board of Professional Responsibility of the issuance of the Certificate of Eligibility.

(b) The Certificate of Eligibility shall be valid for ninety days from the date of issuance. Subject to the time limit imposed by section 1.02 of this Rule, the Board may grant the applicant a reasonable, one-time extension of the time within which to complete the licensure process, including compliance with Tenn. Sup. Ct. R. 6, if the applicant shows to the satisfaction of the Board that he or she is unable to complete the process within the ninety-day period. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Law Reviews. Sherman Antitrust Act — State Action Immunity — Bar Examiners' Liability, 52 Tenn. L. Rev. 525 (1985).

Sec. 9.02. Issuance of License.

(a) On the basis of the Certificate of Eligibility, and upon the successful applicant's compliance with Tenn. Sup. Ct. R. 6, the Supreme Court shall issue a license admitting the successful applicant to the bar of Tennessee. However, the Board may revoke the Certificate of Eligibility if at any time before the administering of the oath of admission the Board receives notice of any event that would have changed the Board's decision to approve an applicant for licensing.

(b) The license shall be in such form as may be approved by the Supreme Court. Each such license shall be signed by the members of the Board and the members of the Court. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 9.03. Effective Date of Admission. — An applicant shall not be considered admitted to the bar of Tennessee until issuance of a license by the Supreme Court upon compliance with Tenn. Sup. Ct. R. 6. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 9.04. Duty of Applicant to Inform Board of Subsequent Events.

If at any time before the issuance of a license an applicant becomes aware of any fact or circumstance which might indicate that such applicant is not entitled to admission, the applicant shall promptly advise the Board of such fact or circumstance as provided in section 3.02. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 9.05. Disapproval by the Supreme Court. At any time before the issuance of a license to an applicant, the Supreme Court may for good cause disapprove the issuance of such license. On such disapproval, the Court shall enter an order stating the grounds for such disapproval and may refer the matter to the Board for such further action as the Court may deem appropriate. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 9.06. Replacement License. — For good cause shown, the Board may recommend to the Supreme Court the issuance of a replacement license to any person who has previously been licensed to practice law in Tennessee. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 9.07. Denial of License. If the decision of the Board to deny an application is based, in whole or in part, on the failure of the applicant to demonstrate compliance with the Character and Fitness Standard in section 6.01, the applicant may not reapply for admission within a period of three years after the issuance of the order denying the application. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

ARTICLE X—SPECIAL OR LIMITED PRACTICE

Sec. 10.01. Registration of In-House Counsel.

(a) A lawyer who is admitted to the practice of law in another U.S. jurisdiction or is a foreign lawyer who is employed as a lawyer by an organization, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, and who has a systemic and continuous presence in this jurisdiction pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1), shall register as in-house counsel within 180 days of the commencement of employment as a lawyer by submitting to the Board the following:

- (1) A completed application in the form prescribed by the Board;

(2) A fee in the amount set by the Board under section 11.01;

(3) Documents proving admission to practice law and current good standing in all United States and foreign jurisdictions in which the lawyer is admitted to practice law. If the jurisdiction is foreign and the documents are not in English, the lawyer shall submit an English translation and satisfactory proof of the accuracy of the translation; and

(4) An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed, and stating that the employment conforms to the requirements of this Rule.

For purposes of this Rule, a "foreign lawyer" is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority. Upon recommendation of the Board, the Supreme Court may allow a foreign lawyer lawfully practicing as in-house counsel in a foreign jurisdiction who does not meet the above requirements to register as an in-house counsel after consideration of other criteria, including the lawyer's legal education, references, and experience.

(b) A registered lawyer under this section shall have the rights and privileges otherwise applicable to members of the bar of this State with the following restrictions:

(1) The registered lawyer is authorized to provide legal services to the entity client or its organizational affiliates, including entities that control, are controlled by, or are under common control with the employer, and for employees, officers and directors of such entities, but only on matters directly related to the registered lawyer's work for the entity and only to the extent consistent with Tenn. Sup. Ct. R. 8, RPC 1.7; and

(2) The registered lawyer shall not:

(A) Except as otherwise permitted by the rules of this State, appear before a court or any other tribunal as defined in Tenn. Sup. Ct. R. 8, RPC 1.0(m);

(B) Offer or provide legal services or advice to any person other than as described in paragraph (b)(1), or hold himself or herself out as being authorized to practice law in this State other than as described in paragraph (b)(1); and

(C) If a foreign lawyer, provide advice on the law of this or another jurisdiction of the United States except upon the basis of advice from a lawyer who is duly licensed and authorized to provide such advice.

(c) Notwithstanding the provisions of paragraph (b)(2)(A) and (B), above, a registered lawyer under this section, other than a foreign lawyer, is authorized to provide pro bono legal services through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction.

(d) A registered lawyer under this section shall:

(1) Complete the registration process with the Board of Professional Responsibility within thirty days of approval of the application to register under this section;

(2) Pay all annual fees payable by active members of the bar;

(3) Fulfill the continuing legal education requirements that are required of

active members of the bar; and

(4) Report to the Board, within thirty days, the following:

(A) Termination of the lawyer's employment;

(B) Whether or not public, any change in the lawyer's license status in another jurisdiction, including by the lawyer's resignation; and

(C) Whether or not public, any disciplinary charge, finding, or sanction concerning the lawyer by any disciplinary authority, court, or other tribunal in any jurisdiction.

(e) A lawyer who is registered or who is required to register under this section shall be subject to Tenn. Sup. Ct. R. 8 (Rules of Professional Conduct) and all other laws and rules governing lawyers admitted to the active practice of law in this State. The Board of Professional Responsibility has and shall retain jurisdiction over the lawyer who is registered or required to register with respect to the conduct of the lawyer in this or another jurisdiction to the same extent as it has over lawyers generally admitted in this State.

(f) A registered lawyer's rights and privileges under this section automatically terminate when:

(1) The lawyer's employment terminates;

(2) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted;

(3) The lawyer fails to maintain active status in at least one jurisdiction; or

(4) The lawyer fails to comply with the requirements in paragraph (d)(1) – (4), above.

Upon the occurrence of one or more of the foregoing events, the registered lawyer shall give written notice within thirty days to the Board and to the Board of Professional Responsibility.

(g) A registered lawyer whose registration is terminated under paragraph (f)(1) above, may be reinstated within 180 days of termination upon submission to the Board of the following:

(1) An application for reinstatement in a form prescribed by the Board;

(2) A reinstatement fee set by the Board pursuant to section 11.01; and

(3) An affidavit from the current employing entity as prescribed in paragraph (a)(4).

(h) A lawyer under this Rule who fails to register within 180 days of commencement of employment shall be:

(1) Permitted to register under this section as provided in paragraph (a), above but will be required to pay a late registration fee as provided in the fee schedule established under section 11.01;

(2) Subject to professional discipline in this jurisdiction;

(3) Ineligible for admission pursuant to section 5.01 of this Rule;

(4) Referred by the Board to the Board of Professional Responsibility; and

(5) Referred by the Board to the disciplinary authority of the jurisdiction(s) of licensure.

(i) A lawyer's service to the lawyer's employer before timely registration under this Rule shall not constitute the unauthorized practice of law or otherwise be treated as violating Tenn. Sup. Ct. R. 8, RPC 5.5 as long as the services are permitted under this Rule for registered lawyers and the lawyer files the application for registration under section 10.01(a) of this Rule within

180 days of the commencement of the lawyer's employment. The protection of this section applies only to lawyers who submit an application to register under this section within 180 days of commencement of practice in Tennessee.

(j) A lawyer who is eligible to register under this section but who submits an application for admission without examination under section 5.01, by examination under section 3.01, or by transferred UBE score under section 3.05, must register to practice pending admission under section 10.07 or also register as in-house counsel. The protections of paragraph (i) do not apply for admission under other provisions of this Rule.

(k) **Amnesty.** A foreign lawyer who has been employed as a lawyer in an organization in Tennessee for more than 180 days at the time of enactment of amended section 10.01 and who complies fully with the requirements of this Rule on or before September 30, 2019, shall not be barred from registration under this Rule or from practicing under the authority of Tenn. Code Ann. § 23-3-103 and RPC 5.5(d)(1) solely by the fact of prior noncompliance with Tennessee law concerning licensure of in-house counsel. [As amended by order filed October 23, 2009, effective January 1, 2010; and by order filed January 18, 2012, effective January 18, 2012; amended by order filed December 21, 2015, effective January 1, 2016; amended by order filed and effective May 31, 2017; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 10.02. Approval of Experiential Learning Programs and Attorneys in Experiential Learning and Related Law School Programs.

(a) **Experiential Learning Programs.** For the purpose of this section and section 10.03 herein, Experiential Learning Program means an academic program administered by a law school through which a law student may enroll for academic credit in a law clinic or field placement course.

(1) A law clinic offered through an Experiential Learning Program provides substantial lawyering experience that involves advising or representing one or more actual clients or serving as a third-party neutral, and includes the following:

(A) direct supervision of the student's performance by a law school faculty member;

(B) opportunities for performance, feedback from a faculty member, and self-evaluation; and

(C) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.

(2) A field placement course offered through an Experiential Learning Program provides substantial lawyering experience that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and includes the following:

(A) direct supervision of the student's performance by a faculty member or field placement site supervisor;

(B) opportunities for performance, feedback from either a faculty member or

a field placement site supervisor, and self-evaluation;

(C) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and the respective roles of faculty and any field placement site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;

(D) a method for selecting, training, evaluating and communicating with field placement site supervisors, including regular contact between the faculty and field placement site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience;

(E) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection;

(F) evaluation of each student's educational achievement by a faculty member; and

(G) sufficient control of the student experience to ensure that the requirements set forth in section 10.02(a)(2)(A)-(F) are met.

(b) Approval of Experiential Learning Programs. The Board shall review a law school's Experiential Learning Program as the basis for a recommendation to the Supreme Court. Approval of the Experiential Learning Program is a prerequisite for the approval of law students who are practicing under section 10.03 in an experiential learning setting. The criteria that serve as a basis for approval shall be:

(1) that the law school is approved under section 17.01 of this Rule;

(2) that if the law school has an in-house legal clinic which directly represents clients, that the program has either an attorney licensed to practice and in good standing in Tennessee or an attorney approved for limited practice as provided in paragraph (d), below, who directs the clinic and who is employed by or associated with the law school; and

(3) that the law school's Experiential Learning Program is otherwise operated in a manner consistent with the requirements of this Rule.

(c) The Supreme Court must approve a law school's Experiential Learning Program, based on a recommendation from the Board, before any law student may practice under section 10.03 in an experiential learning setting. Certification of an Experiential Learning Program may be withdrawn by the Supreme Court upon recommendation of the Board if the program ceases to meet the foregoing criteria.

(d) Attorneys in Experiential Learning Law School Programs. An attorney who is employed by or associated with an ABA-accredited or Tennessee-Approved Law School as faculty for the Experiential Learning Program may be admitted to practice on a limited basis before the courts of this State on behalf of the Experiential Learning Program. The attorney must establish to the satisfaction of the Board that the attorney:

(1) is a member of a court of last resort of another state, a U.S. Territory or the District of Columbia;

(2) submits a certificate from the court of last resort referenced in (d)(1) certifying that the attorney is a member in good standing at the bar of that

court;

(3) has not been denied admission to practice in any jurisdiction, including Tennessee;

(4) submits a statement signed by the dean of the law school where the attorney is employed or associated in a verifying employment; and

(5) has paid all required fees.

(e) The Supreme Court, upon the recommendation of the Board that the attorney satisfies all the requirements of paragraph (d), shall enter an order authorizing the attorney to practice in connection with an approved Experiential Learning Program. Upon the entry of the Court's order, the Board shall provide the attorney with a certificate of admission.

(f) Admission to practice under this section shall cease upon the first of the following to occur:

(1) after two years from the date of admission under this section, except in the discretion of the Supreme Court in special situations for good cause shown, provided that attorneys who wish to continue to practice in this State must seek admission under sections 3.01 (by examination), 3.05 (by transferred UBE score) or 5.01 (without examination) of this Rule so that they are eligible for licensing before the expiration of the two-year period. Time in practice pursuant to this section will count as "active practice of law" for purposes of admission pursuant to section 3.05(b) or 5.01; or

(2) cessation of the attorney's employment by or association with the law school, notice of which will be provided to the Board by the law school dean within ten days of the attorney's cessation of employment or association with the law school.

(g) Attorneys admitted to practice under this section are subject to the Rules of Professional Conduct and may be disciplined as provided for in Tenn. Sup. Ct. R. 9. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 10.03. Law Student Practice.

(a) **Purpose.** The purpose of this section is educational; consequently, its focus is on providing opportunities, whether credit-bearing or not, for students to further their legal training through properly supervised legal practice. Interpretation of this section should be in accordance with its educational goals.

(b) **Definitions.** Throughout this section:

(1) the term "approved law school" refers to any law school that has been accredited by the ABA or any law school in the state of Tennessee approved under section 17.01 of this Rule;

(2) the term "Experiential Learning Program" shall incorporate the definition in section 10.02(a);

(3) the term "director" refers to the director of the law school's Experiential Learning Program that has been approved by the board under section 10.02(b);

(4) the term "provide legal services" is to be construed broadly, so as to allow a law student who is admitted under this section to provide any and all services that could be provided by a licensed attorney, subject to supervision as provided in this Rule;

(5) the term “person or entity financially unable to afford counsel” includes all persons whom any court could deem eligible for the appointment of counsel, as well as persons and entities unable to reasonably secure legal counsel for the subject matter of the representation, or who can otherwise demonstrate to the satisfaction of the director that they cannot reasonably afford counsel; and

(6) the term “governmental agency or agencies” refers to any state, county, municipal or federal government agency, department or entity located in Tennessee.

(c) **Qualified law student.** In order to perform the activities outlined in section 10.03(g), a qualified law student is a student enrolled in an approved law school, except that the student is not required to be enrolled during a summer term or when the school is not in session, certified under section 10.03(d), and approved under section 10.03(e).

(d) **Certification.** The qualified law student shall:

(1) be certified by the dean of the law student’s law school or the director:

(A) as having satisfactorily completed not less than one-half of the required curriculum for graduation, computed on an hourly basis;

(B) as being in academic good standing at the law school; and

(C) as meeting any other requirements the law school places on certification under this Rule; and

(2) certify in writing that he or she has read, is familiar with, and will abide by Tennessee Supreme Court Rules 8 and 9.

(e) **Approval by the Supreme Court.** (1) The dean of the law student’s law school or the director shall file a request for approval of a qualified law student with the Clerk of the Supreme Court of Tennessee in Nashville on forms and in the format required by the Supreme Court.

(2) Upon a showing that the law student is qualified under the provisions of this Rule, the Supreme Court shall issue an order approving the law student to practice.

(3) Upon the entry of the order approving a law student to practice under this Rule, the Board shall provide the student with a certificate of admission.

(f) **Duration of Law Student Practice.** (1) **Eligibility.** A law student’s eligibility to provide service under this Rule terminates upon the earlier of:

(A) expiration of the approval by the Supreme Court;

(B) graduation from law school;

(C) receipt by the Clerk of the Supreme Court of the notice set forth in paragraph (f)(3), below that one of the following has occurred:

(i) cessation of law school enrollment before graduation;

(ii) completion of the experiential learning placement that is the basis for the law student’s eligibility; or

(iii) upon written notice from the dean of the law student’s law school or the director that the law student no longer meets the eligibility requirements under this Rule.

(2) **Short-term Permission to Engage in Law Student Practice.** Qualified law students whose approval to practice has expired under paragraph (f)(1) may participate in a short-term pro bono event as an approved qualified law student, provided that:

(A) the qualified law student is approved by the director for the short-term

pro bono event;

(B) the qualified law student is supervised by an attorney approved by the director;

(C) the short-term pro bono event is sponsored by the law school; and

(D) the pro bono event is held on consecutive days and does not exceed ten days.

(3) **Notice Required.** Notice of an event of termination of a qualified law student's eligibility under paragraph (f)(1)(C), above shall be promptly provided by the dean of the qualified law student's law school or the director by sending notice to the Clerk of the Supreme Court in Nashville and the Executive Director of the Tennessee Board of Law Examiners.

(g) **Activities.** (1) An approved qualified law student may provide legal services on behalf of any person or entity financially unable to afford counsel or on behalf a governmental agency through:

(A) a law school clinical course;

(B) governmental agencies as defined in paragraph (b)(6);

(C) Office of the Attorney General and Reporter, District Public Defender or District Attorney General;

(D) any program funded in whole or in part by Legal Services Corporation; or

(E) a non-profit organization that, as part of its mission, provides legal services to persons or entities financially unable to afford counsel.

(2) Any pleadings, briefs, abstracts or other documents prepared by a qualified law student acting pursuant to this Rule must contain the name and signature of the qualified law student who participated in drafting it with the accompanying designation, "Qualified Law Student Approved under Tenn. Sup. Ct. R. 7, Sec. 10.03" but must also be signed by the supervising attorney (the "supervising attorney") as defined in paragraph (h), below.

(3) The rules of law and evidence relating to privileged communications between attorney and client shall govern communications made or received by qualified law students and their clients.

(h) **Supervision.** (1) The qualified law student shall be under the immediate and personal supervision of an attorney who meets the requirements of paragraph (3), below. If the supervising attorney is not teaching in a law school clinic, the attorney must be approved in writing by the dean or director.

(2) It is the responsibility of the supervising attorney to ensure that the student is properly supervised and instructed, including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3, and be present for administrative or adjudicatory proceedings; however, it is not necessary that the licensed attorney be personally present when the student engages in other activities such as interviewing, investigation, drafting and negotiation.

(3) The supervising attorney must:

(A) be a lawyer licensed and in good standing in Tennessee;

(B) have practiced for a minimum of three years;

(C) assume professional responsibility for the direct and immediate supervision for the professional work of the qualified law student; and

(D) be a full-time employee of an entity identified in paragraph (g)(1)(A)-(E), above, and supervise the qualified law student in connection to that employment.

(i) **Disciplinary Complaints.** (1) In the event a disciplinary complaint is filed based on a qualified law student's participation under these rules, the authority with whom such complaint is filed shall immediately report the same to the dean of the student's law school and the Board of Law Examiners. Upon receipt of notice of a complaint, the dean or director shall provide the Board of Professional Responsibility the name of the supervising attorney for the law student against whom the complaint is filed.

(2) By operation of this Rule, a disciplinary complaint against a qualified law student constitutes a complaint against the supervising attorney. The Board of Professional Responsibility shall have jurisdiction over the complaint against both the student and the supervising attorney and, in the discretion of the Board of Professional Responsibility, may refer the complaint against the student to the Office of the Attorney General and Reporter, the Board of Law Examiners, or the law school.

(j) **Compensation.** This Rule does not preclude compensation of a qualified law student when consistent with the law school's academic policies. However, in no event shall the qualified law student be employed or compensated directly by a client for services rendered. [As amended by order filed February 13, 2003; by order filed June 2, 2006; and by order filed May 18, 2009; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Attorney General Opinions. Court appearance of senior law students on indigent's behalf, OAG 99-028 (2/17/99).

A senior law student may appear on behalf of indigent persons accused of crimes or as an assistant to the district attorney general, if such appearance has the written approval of the supreme court of Tennessee, the district attorney general, and the trial judge involved,

and if such appearance is otherwise in strict compliance with Tenn. Sup. Ct. R. 7, § 10.03; further, such a senior law student must be under the immediate supervision of the faculty director of the legal aid clinic or director of the bar association sponsored legal aid society and/or a licensed attorney selected by the director, OAG 01-168 (11/21/01).

Sec. 10.04. Practice before Admission by Examination Score.

(a) **Eligibility.** (1) An applicant may register with the Board in order to perform the services described in paragraph (c) of this section provided the applicant:

(A) has never been licensed to practice law in another state in the United States, the District of Columbia, or U.S. Territories;

(B) has submitted an application pursuant to section 3.01 or 3.05 of this Rule;

(C) meets the educational requirements of section 2.01 and 2.02 of this Rule;

(D) works in Tennessee under the supervision of a licensed lawyer who is admitted and in good standing in Tennessee; and

(E) has:

(i) not yet had an opportunity to take the Tennessee bar examination;

(ii) taken the examination but not yet received notification of the results of the examination; or

(iii) taken the examination or submitted a UBE score transfer application, but has not yet been admitted as a member of the Tennessee bar.

(2) An applicant is eligible for supervised practice under this section beginning with the submission of the first Application to the Bar of Tennessee or the graduation from law school, whichever is later.

(3) Applicants registered for supervised practice who are unsuccessful on the examination and who submit a re-examination application for the next available exam within ten days of the release of examination results may continue to practice under supervision subject to the time limits in paragraph (4). The privilege to engage in supervised practice expires for applicants who are unsuccessful on the examination and do not submit a re-examination application within ten days of notification of examination results.

(4) The privilege to engage in supervised practice expires: upon admission of eligible examination or UBE score transfer applicants; as provided in paragraph (3) for unsuccessful examinees; upon admission in any other state, the District of Columbia, or U.S. Territory; or upon issuance of an order to show cause. In no event shall the privilege to engage in supervised practice continue for more than sixteen months from the date an applicant graduated from law school.

(5) The Board shall have no discretion to extend the time an applicant may engage in limited practice.

(6) An applicant who is licensed in another jurisdiction and seeking admission under sections 3.01, 3.05, 5.01, or 10.06 of this Rule may practice pending admission as provided in section 10.07.

(b) **Registration Process.** In order to perform the services described in paragraph (c), the applicant must submit to the Board the NCBE application, the Tennessee Supplemental application, and the fees associated with the application. Additionally, the applicant must register for supervised practice according to the procedures established by the Board and pay the required fee. The applicant must include with the registration an affidavit from an attorney licensed and in good standing in Tennessee stating that the attorney agrees to undertake the supervision of the applicant in accordance with this section.

(c) **Supervision.** (1) The applicant shall be under the immediate and personal supervision of an attorney who meets the requirements of paragraph (3), below.

(2) It is the responsibility of the supervising attorney to ensure that the applicant is properly supervised and instructed including compliance with Tenn. Sup. Ct. R. 8, RPC 5.3, and be present as provided in paragraph (d)(2), below; however, it is not necessary that the supervising attorney be present when the applicant engages in activities such as interviewing, investigation, drafting, and negotiation.

(3) The supervising attorney must:

(A) be a lawyer licensed and in good standing in Tennessee;

(B) have practiced for a minimum of three years; and

(C) assume professional responsibility for the direct and immediate supervision for the professional work of the applicant.

(d) **Services Permitted.** Under the supervision of the supervising attorney, and with the written consent of the person on whose behalf the applicant is acting, an applicant approved for supervised practice may render the following services.

(1) Applicant may counsel and advise clients, negotiate in the settlement of claims, represent clients in mediation and other non-litigation matters, and engage in the preparation and drafting of legal instruments. Any communication other than internal communications may be signed by the applicant with the accompanying designation "Tennessee Bar Applicant" but must also be signed by the supervising attorney.

(2) Applicant may appear in the trial courts, courts of review and administrative tribunals of this state, including court-annexed arbitration and mediation, subject to the following qualifications:

(A) Written consent to representation of the person on whose behalf the applicant is acting shall be filed in the case and brought to the attention of the judge or presiding officer.

(B) Appearances, pleadings, motions, and other documents to be filed with the court may be prepared by the applicant and may be signed with the accompanying designation "Tennessee Bar Applicant."

(C) In criminal cases in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the applicant may participate in pretrial, trial, and post-trial proceedings as an assistant of the supervising attorney, who shall be present and responsible for the conduct of the proceedings.

(D) In all other civil and criminal cases in the trial courts or administrative tribunals, the applicant may conduct all pretrial, trial, and post-trial proceedings with the Supervising Attorney present unless the applicant is permitted by the judge or presiding officer to participate without direct supervision.

(E) In matters before appellate courts, the applicant may prepare briefs, excerpts from the record, abstracts, and other documents. If any such filings set forth the name of the applicant as a counsel of record in addition to the supervising attorney, the name of the applicant must be accompanied by the designation "Tennessee Bar Applicant" but must be filed in the name of the supervising attorney. Upon motion by the supervising attorney, the applicant may request authorization to argue the matter before the appellate court but, even if the applicant is permitted to argue, the supervising attorney must be present and is responsible for the conduct of the applicant at the hearing.

(e) **Compensation.** An applicant rendering services authorized by this section shall not request or accept any compensation from the person for whom applicant renders the services. The supervising attorney may make an appropriate charge. The applicant may be compensated as an employee of a firm, agency, clinic or other organization so long as the rate of such compensation is established independent of compensation paid for representation.

(f) **Aid in Establishing Supervised Practice.** Any applicant who otherwise meets all the qualifications contemplated in this section, but who is unable to make a connection or association with a practicing attorney for purposes of serving as a Supervising Attorney as required by this section, may apply to any trial judge holding court in the county of such applicant's residence for aid in the establishment of a supervised practice under this section. Such practice must accord strictly with the provisions of this section. No deviation will be permitted.

(g) **Disciplinary Complaints.** (1) In the event a disciplinary complaint is filed in a case in which an applicant has been permitted to practice under this

section, the authority with whom such complaint is filed shall immediately report the complaint to the Board. Upon receipt of a notice of a complaint, the Board shall provide the Board of Professional Responsibility the name of the supervising attorney for the applicant.

(2) By operation of this Rule, a disciplinary complaint against an applicant permitted to practice under this section constitutes a complaint against the supervising attorney. The Board of Professional Responsibility shall have jurisdiction over the complaint against both the applicant and the supervising attorney and may refer the complaint against the applicant to the Office of the Attorney General and Reporter or the Board.

(h) **Board Permitted to Disclose.** Notwithstanding the provisions of section 12.11, the Board may disclose that an applicant is authorized to practice pursuant to this section and may disclose if and when that authorization is terminated. [As amended by order filed September 11, 1984; by order filed April 15, 1999, effective May 1, 1999; amended by order filed December 21, 2015, effective January 1, 2016; amended by order filed and effective November 27, 2017; amended by order filed and effective April 18, 2018; and amended by order filed and effective March 29, 2019.]

Sec. 10.05. Conditional Admission.

(a) **Definition.** An applicant whose previous conduct or behavior would or might result in a denial of admission may be admitted to the practice of law on a conditional basis ("Conditional Admission") in accordance with this Rule. The Board shall recommend relevant conditions in a confidential order (the "Confidential Admission Order") relative to the conduct or the cause of such conduct with which the applicant must comply during the period of conditional admission. The Board may order Conditional Admission to permit an applicant to practice law while the applicant's continued participation in an ongoing course of treatment, remediation, or other monitoring for previous misconduct or evidence of unfitness is monitored to protect the public.

(b) Requirements for Issuance of Conditional Admission Order. (1)

The Board may issue a Show Cause Order pursuant to section 13.01 in order to establish whether Conditional Admission is appropriate for an applicant who has engaged in conduct or otherwise demonstrated to the Board that the applicant may not presently meet the applicable Character and Fitness Standard under section 6.01.

(2) The Board may consent to entry of an Agreed Conditional Admission Order for an applicant based on the applicant's record and the recommendation of qualified professionals, when appropriate, and the determination that the applicant currently satisfies all requirements for admission and the applicable Character and Fitness Standard under section 6.01 while engaged in a sustained and effective course of treatment, remediation, or monitoring. The Agreed Conditional Admission order shall include the terms and conditions with which the applicant must comply and must be signed by the applicant and the Executive Director on behalf of the Board.

(3) A Show Cause Order issued under paragraph (c)(1) may be resolved without hearing under paragraph (c)(2), above, upon the filing of a response that demonstrates the applicant satisfies the applicable character and fitness

standards and meets the requirements of a sustained and effective course of treatment, remediation or monitoring.

(c) **Conditions.** The Board in its discretion may condition an applicant's admission by requiring compliance with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public. The conditions shall be tailored to detect and deter conduct, conditions or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, remediation, counseling, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate, and protect the privacy interests of the conditionally admitted lawyer to professional treatment records to the extent possible. The terms shall be set forth in "Conditional Admission Order". The Conditional Admission Order shall be made a part of the conditionally admitted lawyer's application file and shall remain confidential, except as provided in this and any other applicable rules. Upon entry of the Conditional Admission Order and completion of all eligibility requirements, the Board shall issue the Temporary Certificate of Eligibility for Admission pursuant to section 9.01 of this Rule. The Board shall have no further authority once the conditionally admitted lawyer is admitted to practice law in Tennessee.

(d) **Notification to the Board of Professional Responsibility.**

Immediately upon issuance of a Conditional Admission Order, the Board shall transmit a copy of the order to the Board of Professional Responsibility. If the Board of Professional Responsibility or any other jurisdiction's disciplinary authority receives a complaint alleging unprofessional conduct by the conditionally admitted lawyer, or if the Monitoring Authority designated pursuant to paragraph (f) notifies the Board of Professional Responsibility of substantial noncompliance with the Conditional Admission Order, the Board of Professional Responsibility shall request a copy of relevant portions of the lawyer's bar application file, and the Board shall promptly provide the requested materials to the Board of Professional Responsibility.

(e) **Length of Conditional Admission.** The conditional admission period shall be set in the Conditional Admission Order, but shall not exceed sixty months, unless notification of substantial noncompliance with the Conditional Admission Order has been received by the Board of Professional Responsibility or a complaint of unprofessional conduct has been made against the conditionally admitted lawyer with the Board of Professional Responsibility or any other lawyer disciplinary authority.

(f) **Compliance with Conditional Admission Order.** During the conditional admission period, the Monitoring Authority shall be the Tennessee Lawyer Assistance Program, unless a different monitoring authority, such as a practice monitor, is assigned in the Conditional Admission Order, with the consent of the Board of Professional Responsibility. The Monitoring Authority shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order, including, but not limited to, requiring that the conditionally admitted lawyer submit written verification of compliance with the conditions, appear before the Monitoring Authority, and provide information requested by the Monitoring Authority.

(g) **Costs of Conditional Admission.** The applicant shall be responsible for any direct costs of investigation, evaluation, testing and monitoring. Other costs shall be borne in accord with this Rule or any other applicable Tennessee Supreme Court Rule.

(h) **Failure to Fulfill the Terms of Conditional Admission.** Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the Conditional Admission Order, which may include extension of the period of conditional admission, suspension or revocation of the Conditional Admission Order or such other action as may be appropriate under Tenn. Sup. Ct. R. 9, including temporary suspension pursuant to Tenn. Sup. Ct. R. 9, § 12.3. The Monitoring Authority shall promptly notify the Board of Professional Responsibility whenever it determines that the conditionally admitted lawyer is in substantial noncompliance with the terms of the Conditional Admission Order. Notification of such noncompliance by the Monitoring Authority shall automatically extend the conditional admission until disposition of the matter by the Board of Professional Responsibility and any resulting appeals.

(i) **Violation of Conditional Admission Order.** The Board of Professional Responsibility shall initiate proceedings to determine whether the conditional admission should be revoked, extended or modified by filing a petition to review conditional admission. Consideration and disposition of any such petition shall follow the procedure for formal proceedings as set forth in Tenn. Sup. Ct. R. 9; however, the only issue to be determined is whether the conditional admission should be revoked, extended or modified. Any decision to extend or modify the Conditional Admission Order must be made in consultation with the Monitoring Authority. If the conditionally admitted attorney was temporarily suspended due to substantial noncompliance with a monitoring agreement, any disposition of the petition to review conditional admission may include dissolution of the temporary suspension.

(j) **Expiration of Conditional Admission Order.** Unless the Conditional Admission Order is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The Monitoring Authority shall notify the Board of Professional Responsibility of such expiration.

(k) **Confidentiality.** Except as otherwise provided herein, and unless the Supreme Court orders otherwise, the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that the applicant shall disclose the entry of any Conditional Admission Order to the admissions authority in any jurisdiction where the applicant applies for admission to practice law. In addition to ensuring that the relevant records of the Board, the Board of Professional Responsibility and the Tennessee Lawyer Assistance Program are confidential, the Board shall use reasonable efforts to structure the terms and conditions of the conditional admission so that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with the terms of the Conditional

Admission Order by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

(l) **Education.** The Board shall make information about its conditional admission process publicly available and shall reasonably cooperate with the Tennessee Lawyer Assistance Program in its efforts to educate law students, law school administrators and applicants for bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers.

(m) **Disciplinary Complaints.** The provisions of this section shall not affect the authority of the Board of Professional Responsibility, pursuant to Tenn. Sup. Ct. R. 9, to investigate a complaint filed against a conditionally admitted lawyer by a person or entity other than the Monitoring Authority, to recommend a disposition of such complaint or to initiate a formal disciplinary proceeding as to such complaint, pursuant to Tenn. Sup. Ct. R. 9, § 15. [Added by order filed September 3, 2009; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Explanatory Comment: (1) Some examples of when Conditional Admission may be used to show that the applicant satisfies the Character and Fitness Standard under section 6.01, except that the applicant is engaged in a sustained and effective course of treatment, remediation, or other monitoring, include but are not limited to:

(A) Substance abuse, misuse or dependence;
(B) A diagnosed mental or physical impairment that, should it recur, would likely impair the applicant's ability to practice law or would pose a threat to the public; or

(C) Neglect of financial affairs, disregard or neglect of personal or professional obligations, or demonstration of unprofessional conduct such as failure to comply with deadlines and time constraints, or failure to conduct oneself diligently and reliably, that would otherwise

render the applicant unfit for admission to the bar.

(2) Examples of types of conditions that may be required, in the discretion of the Board, for Conditional Admission include, but are not limited to:

(A) alcohol, drug, or mental health treatment;

(B) medical, psychological, or psychiatric care;

(C) participation in group therapy or support;
(D) random chemical screening;

(E) office practice or debt management counseling;

(F) monitoring, supervision, mentoring; and/or

(G) other conditions deemed appropriate by the Board.

Sec. 10.06. Temporary License of Spouse of a Military Servicemember.

(a) **Qualifications.** An applicant who meets the requirements listed in (1) through (11), below may be temporarily licensed and admitted to the practice of law in Tennessee, upon approval of the Board. Applicant:

(1) is the spouse of an active duty servicemember of the United States Uniformed Services as defined by the Department of Defense and that servicemember is on military orders stationed in the State of Tennessee or Fort Campbell, Kentucky;

(2) has been licensed and admitted by examination to practice law before the court of last resort in at least one other jurisdiction of the United States;

(3) meets the educational requirements of sections 2.01 and 2.02 of this Rule;

(4) has achieved a passing score on the Multistate Professional Responsibility Examination ("MPRE") as it is established in Tennessee at the time of

application;

(5) is currently an active member in good standing in every jurisdiction to which the applicant has been admitted to practice, or has resigned or been administratively revoked while in good standing from every such jurisdiction without any pending disciplinary actions;

(6) is not currently subject to lawyer discipline in any other jurisdiction;

(7) meets the Character and Fitness Standard under section 6.01 required of all applicants for admission and licensing in Tennessee;

(8) is physically residing in Tennessee or Fort Campbell, Kentucky, due to the servicemember's military orders;

(9) has never failed the Tennessee bar examination;

(10) has certified that the applicant has read and is familiar with the Tennessee Rules of Professional Conduct; and

(11) has paid such fees as may be set by the Board.

(b) Application Requirements. Any applicant seeking a temporary license under this section 10.06 to practice law in Tennessee shall:

(1) file an application for Temporary License for Servicemember's Spouse and an application for character investigation, including all required supporting documents, in the manner established by the Board;

(2) submit a copy of the applicant's Military Spouse Dependent Identification and documentation evidencing a spousal relationship with the servicemember;

(3) provide a copy of the servicemember's military orders to a military installation in Tennessee or Fort Campbell, Kentucky, or a letter from the servicemember's command verifying that the requirement in section 10.06(a)(8) is met;

(4) submit certificate(s) of good standing from the highest court of each state to which the applicant has been admitted and disciplinary history(ies) to demonstrate satisfaction of the requirements of section 10.06 (a)(5);

(5) pay the fee established pursuant to section 11.01 of this Rule; and

(6) comply with the provisions of section 1.07 of this Rule.

(c) Issuance, Renewal and Subsequent Application. (1) Issuance. Upon approval and certification by the Board, the applicant for temporary license shall, upon registration and payment of applicable fees and taking the oath of admission as set forth in sections 9.01 and 9.02 of this Rule, become a member of the Tennessee bar. An attorney temporarily licensed pursuant to this section shall be subject to the same membership obligations, including payment of fees and continuing legal education requirements, as other active members of the Tennessee bar, and all legal services provided in Tennessee by a lawyer licensed and admitted pursuant to this section shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Tennessee, including the Tennessee Rules of Professional Conduct. The original term of the license is two years.

(2) Duration and Renewal.

(A) Persons who hold a temporary license under this provision may apply for subsequent one-year extensions to their license upon filing an application for extension with the Board. The application for extension must include sworn verification that the temporarily licensed attorney continues to meet all of the

qualifications for temporary license as set forth in paragraphs (a), (b) and (c) of this section, and include the required fee for the application. A request for an extension must be submitted to the Board at least one month before the expiration of the temporary license. A request for an extension must be approved by both the Board and the Supreme Court to be effective.

(B) When the active duty servicemember is assigned to an unaccompanied or remote follow-on assignment and the temporarily licensed attorney continues to physically reside in Tennessee or Fort Campbell, Kentucky, the temporary license may be renewed until the active duty servicemember's unaccompanied or remote assignment ends, provided that the attorney spouse complies with the other requirements for renewal.

(C) Subsequent Applications.

A temporarily licensed attorney who wishes to become a permanent member of the bar of Tennessee may apply for admission under sections 3.01, 3.05, or 5.01 of this Rule for the standard application fee minus the application fee paid to the Board for the application for temporary license, not including any fees for requests for extension or background investigation fees. The requirement for a background investigation will be waived if the application for admission is submitted within two years of the original Application for Temporary License.

(d) **Termination.** (1) Event of Termination. An attorney's temporary license to practice law pursuant to this section shall immediately terminate and the attorney shall immediately cease all activities under this section upon the occurrence of any of the following:

(A) the spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the State of Tennessee or Fort Campbell, Kentucky, except as provided in section 10.06(c)(2)(B);

(B) failure of the temporarily licensed attorney to meet any licensing requirements applicable to all active attorneys possessing a license to practice law in this State, including failure to submit a timely application to renew the temporary license;

(C) the attorney no longer physically residing within the State of Tennessee or at Fort Campbell, Kentucky;

(D) the request of the temporarily licensed attorney;

(E) the issuance to the temporary attorney of a Tennessee license under sections 3.01, 3.05, or 5.01 of this Rule;

(F) the temporarily licensed attorney receiving a failing score on the Tennessee bar examination; or

(G) the suspension, disbarment or other action affecting the temporarily licensed attorney's good standing with the bar of Tennessee or any other jurisdiction in the United States in which the temporarily licensed attorney is licensed.

(2) Notices Required.

(A) An attorney temporarily licensed under this section shall provide written notice to the Board and the Board of Professional Responsibility of any Event of Termination within thirty (30) days of the occurrence thereof;

(B) Within thirty days of the occurrence of any Event of Termination, the

temporarily licensed attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and shall furnish proof to the Board and the Board of Professional Responsibility within forty-five days of such notification; and

(ii) file in each matter pending before any court or tribunal in this State a notice that the attorney will no longer be involved in the matter, which shall include such other attorney licensed to practice law in Tennessee selected by the client, as counsel in the place of the temporarily licensed attorney. [Amended by order filed December 21, 2015, effective January 1, 2016; and by order filed and effective October 16, 2018; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 10.07. Practice Pending Admission by Applicant Licensed in Another Jurisdiction.

(a) A lawyer who is licensed to practice law and in good standing in another state in the United States, the District of Columbia, or a U.S. Territory and who has submitted an application for admission under section 3.01, 3.05, 5.01, or 10.06 of this Rule may provide legal services in this jurisdiction through an office or other systematic and continuous presence during the pendency of the application for admission but for no more than 365 days, provided that the lawyer:

(1) is not disbarred or suspended from practice in any jurisdiction;

(2) has not been denied admission to practice in any jurisdiction, including Tennessee, unless the Board determines otherwise;

(3) reasonably expects his or her application for admission to be granted;

(4) notifies the Board of Professional Responsibility in writing within thirty days of first establishing an office or other systematic and continuous presence for the practice of law in this jurisdiction that the lawyer has done so pursuant to the authority in this section;

(5) associates with a lawyer who is admitted to practice and in good standing in Tennessee;

(6) complies with Tenn. Sup. Ct. R. 8, RPC 7.1 and RPC 7.5 in all communications with the public and clients regarding the nature and scope of the lawyer's practice authority in Tennessee;

(7) submits an Application to Register for Practice Pending Admission under this section in the form provided by the Board;

(8) pays the fee associated with the Application to Register for Practice Pending Admission;

(9) does not appear before a tribunal in Tennessee that requires *pro hac vice* admission unless the lawyer is granted such admission;

(10) has never before practiced in Tennessee pursuant to this provision, unless the Board determines otherwise; and

(11) notifies the Board of Professional Responsibility and the Board if the lawyer becomes the subject of a pending disciplinary investigation in any other jurisdiction at any time during the period of practice authorized under this provision.

(b) Notwithstanding the provisions of section 12.11, the Board may disclose that an applicant is authorized to practice under this section and when such authorization terminates.

(c) **Termination of Right of Practice Pending Admission.** The right to practice pending admission under this section terminates if the lawyer withdraws the application for admission or if such application is denied; if the lawyer becomes disbarred, suspended, or takes disability inactive status in any other jurisdiction in which the lawyer is licensed to practice law; if a formal complaint is filed with the Board of Professional Responsibility or an indictment filed by the Attorney General's Office in Tennessee against the lawyer, if the lawyer fails to register for admission *pro hac vice* when required, or if the lawyer fails to timely provide the written notice required by section 10.07(a)(4). Upon termination of the right of practice, the lawyer shall not undertake any new representation that would require the lawyer to be admitted to practice law in this jurisdiction and, within ten days, shall:

(1) cease to occupy an office or other systematic and continuous presence for the practice of law in Tennessee unless authorized to do so pursuant to another Rule;

(2) notify all clients being represented in pending matters, and opposing counsel or co-counsel, of the termination of the lawyer's authority to practice pursuant to the authority in this section; and

(3) take all other necessary steps to protect the interests of the lawyer's clients.

(d) **Change in Associated Attorney.** (1) If the lawyer with whom the applicant has associated under paragraph (a)(5) of this section or the applicant wish to terminate the association, the lawyer with whom the applicant has associated and the applicant shall file notice with the Board and the Board of Professional Responsibility severing the association.

(2) The applicant may continue to practice pending admission if, within ten days of providing the notice required in paragraph (1), the applicant:

(A) associates with another lawyer under paragraph (a)(5);

(B) provides notice of the association to the Board of Professional Responsibility;

(C) submits an Application to Register for Practice Pending Admission under paragraph (a)(7); and

(D) pays the fee associated with the application to re-register for practice pending admission.

(3) If the applicant does not associate with another lawyer within ten days of providing notice as required under paragraph (1), the applicant's permission to practice pending admission terminates, and the applicant must comply with the requirements of paragraph (d)(2) of this section. [Adopted by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

ARTICLE XI—FEES

Sec. 11.01. Schedule of Fees. The Board shall adopt, from time to time, a schedule of fees to be paid by applicants. No fee shall be charged without the approval of the Supreme Court. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Cross-References. Annual accounting to secretary of state, T.C.A. § 23-1-106.

Sec. 11.02. Payment Mandatory. No step in the admissions process may be taken except upon the payment of the fees required for that step. No license will be issued until all fees due from the applicant have been paid. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 11.03. Refunds. Fees are non-transferable and non-refundable, except that the fee for examination or re-examination may be refunded in part as provided in the schedule of fees adopted by the Board and approved by the Supreme Court, as provided in section 11.01 of this Rule. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

ARTICLE XII—ORGANIZATION AND POWERS OF BOARD

Sec. 12.01. Composition of Board and Term. The Board shall consist of five attorneys licensed to practice law in this State and in good standing. The Board members shall be appointed to three-year terms by the Supreme Court. No member who has served three successive three-year terms shall be eligible for reappointment to the Board until three years after the termination of the most recent term. [As amended by order filed March 14, 2002; and further amended by order filed November 20, 2013; amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.02. Officers and Allocation of Responsibilities. The officers of the Board shall consist of a President, a Vice President and a Secretary-Treasurer. The Board may, however, allocate responsibilities not requiring formal action, as it deems appropriate, on an informal basis. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.03. Official Seal. The Board shall use a seal of office containing the following words: "STATE OF TENNESSEE BOARD OF LAW EXAMINERS." [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.04. Formal Actions; Quorum.

(a) Denial of an application to take the bar examination, or denial of a license, or the adoption of Board policies and rules shall be taken only on formal action concurred in by at least three members of the Board, expressed in an order.

(b) Three members of the Board shall constitute a quorum.

(c) Preliminary approval to take the bar examination may be given and any other informal action may be taken by any member of the Board. [As amended by order filed March 14, 2002; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.05. Policy and Procedure of the Board. — (a) The Board shall have the power to adopt such statements of policy and procedure as it may deem necessary or expedient, not inconsistent with the rules of the Supreme Court. Upon adoption by the Board, the Executive Director shall provide a copy of the policy or procedure to the Court for approval.

(b) All such statements of policy and procedure shall be maintained by the Executive Director as the Board's Statement of Policy and Procedure and shall be open to public inspection. The Board shall take reasonably appropriate steps to ensure that applicants are given the opportunity to become familiar with the Board's Statement of Policy and Procedure, as well as with this Rule. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.06. Docket of Proceedings. The Executive Director shall maintain a docket of all proceedings before the Board in which formal action of the Board is taken, or in which a hearing is held with respect to any application for admission. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.07. Appointment and Duties of Executive Director. The Supreme Court shall appoint an Executive Director of the Board, who shall serve at the pleasure of the Supreme Court. Following his or her appointment, the Executive Director shall report to the Board, which shall conduct regular performance evaluations of the Executive Director and report such evaluations to the Supreme Court. The Executive Director shall be responsible for all administrative duties in the enforcement of this Rule, including, but not limited to, investigation of the character of applicants, investigation of schools, preliminary review of applications, making arrangements for the giving of examinations, keeping books, records and files, and such other responsibilities as may be delegated or directed by the Board. [As amended by order filed December 18, 2007, effective January 1, 2008; amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.08. Administrative Assistance. The Executive Director may employ such full or part-time administrative and other office assistance as he or she may deem appropriate. [As amended by order filed December 18, 2007, effective January 1, 2008; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.09. Assistants to the Board. The Supreme Court may appoint attorneys licensed to practice law in this State and in good standing to assist in the preparation and grading of examination questions, and to perform such other duties in the enforcement of this Rule as the Board may from time to time direct. The assistants shall serve staggered terms of five years and may be reappointed to serve a second five-year term, provided that shorter terms may be designated initially by the Court where necessary to observe the above rotation [As amended by order filed April 29, 2003; and by order filed December 18, 2007, effective January 1, 2008; amended by order filed December 21, 2015,

effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.10. Salaries. The Board shall fix the salary of the Executive Director and of the employees of the Board, subject to budgetary limitations and approval of the Court. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.11. Confidentiality of Board Records and Files.

(a) Records, statements of opinion, and other information regarding an applicant for admission to the bar communicated by any entity including any person, firm, or institution to the Board or their members, employees, or agents, applications for admission, examination papers and grades, and all investigative records of the Board, including, but not limited to, correspondence and/or electronic transmissions to and from the Board, its members and staff, minutes of Board meetings and its deliberations and all documents, communications and proceedings prepared in connection with evaluations or investigations of law schools under sections 17.01, 17.02, 17.03, 17.04, 17.05, 17.06, 17.07, and 17.10 of this Rule, whether in paper or electronic form, shall be confidential and shall not be open to inspection without written application to and authorization by an appropriate order of the Supreme Court.

(b) The Board is authorized to release information which would otherwise be confidential to disciplinary or law enforcement agencies of any jurisdiction, the Tennessee Lawyer Assistance Program, and to the Board of Professional Responsibility upon written request. The Board may release information that is otherwise confidential as follows:

(1) to the National Conference of Bar Examiners and to the bar admissions authority of any jurisdiction in the United States where the applicant has made a written request, provided a signed and notarized authorization and release, and the receiving authority has agreed not to give the information to the applicant; and

(2) to any other party upon written application to and authorization by an order of the Tennessee Supreme Court.

(c) Statistical information not identified with any particular applicant and information relating to whether and when an applicant has been admitted may be released to any person.

(d) Notwithstanding the provisions above, completion of an Application to the Bar of Tennessee constitutes Applicant's permission allowing the Board to release Applicant's name, address and email address to Bar and professional legal associations in Tennessee, as approved by the Board, and, for applications for admission by examination, Applicant's name and exam result to the law school from which Applicant graduated. [As amended by order filed December 15, 2000, effective January 13, 2001; and by order filed August 31, 2004; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.12. No Power to Waive or Modify Rule of the Supreme Court. — Except as expressly provided in this Rule, the Board has no power to waive or modify any provision of this Rule. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 12.13. Subpoena Power. The Board and each member of the Board are vested with the power to issue subpoenas for witnesses, to compel their attendance, and to compel the production of books, records and documents, to administer oaths to witnesses and to compel witnesses to give testimony under oath, and to have and exercise all other power and authority conferred by the laws of this State and the rules of the Supreme Court upon Commissioners or upon Special Masters of this Court. Subpoenas shall in each instance be attested by the Clerk or a deputy clerk of this Court. Subpoenas shall be issued and enforced in accordance with the provisions of Title 24, Tenn. Code Ann., as in the case of Commissioners authorized to take depositions. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.14. Counsel for Board.

(a) The Board is authorized to request any of the attorney assistants to the Board to act as counsel, or to request the State or any local bar association to furnish counsel, to assist the Board in investigations, preparation for hearings, or the conduct of hearings.

(b) The Attorney General shall represent the Board in any proceedings in court, including the review of Board actions in the Supreme Court. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 12.15. Immunity.

(a) Members of the Board, District Committee Members, the Executive Director, Assistants and employees of the Board shall be immune from civil suit in the course of their official duties.

(b) Records, statements of opinion, and other information regarding an applicant for admission to the bar communicated by any entity, including any person, firm or institution, without malice, to the Board, or to its members, employees or agents, are privileged, and civil suits for damages predicated thereon may not be instituted.

(c) The immunity granted in this section shall not be construed to limit any other form of immunity available to any covered person. [Adopted by order filed April 15, 1999, effective May 1, 1999; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

ARTICLE XIII—FORMAL PROCEEDINGS BEFORE THE BOARD

Sec. 13.01. Show Cause Orders.

(a) **Grounds for Issuance of Show Cause Order.** If the Board finds, from the information furnished it or from investigations made under its

authority, that:

(1) grounds for doubt exist as to whether an applicant:

(A) meets the applicable standard for character and fitness under section 6.01 or

(B) has adhered to the duty of candor under section 6.04; or

(2) sufficient evidence has been provided to the Board that the applicant provided false information or refused to provide information requested by the Board or its investigators, staff, or agents,

the Board shall issue an order requiring the applicant to show cause why the applicant should not be denied admission or the opportunity to take the examination as the Board may determine. Any such show cause order shall state the grounds thereof, shall afford the applicant an opportunity to reply thereto within a period designated therein, and shall set the date, time and place of the hearing.

(b) **Response to Show Cause Order.** The applicant's reply to the Show Cause Order shall be in writing, under oath, and may include such additional affidavits or other documents as the applicant may choose to furnish.

(c) **Resolution of Show Cause Before Hearing.** If the Board determines that any such reply is sufficient to satisfy the concerns of the Board, the Board shall enter an order resolving the Show Cause Order and notify the applicant of the resolution and cancellation of the hearing.

(d) The Board or the Executive Director may contact the applicant in order to secure an informal resolution of the matter before resorting to the formal procedures herein provided, but no such informal disposition shall be made without the consent of the applicant.

(e) **Denial due to Failure to Meet Eligibility Requirements.** If the Board finds that an applicant does not meet the requirements for the type of admission the applicant is seeking, the Board shall deny admission of the applicant and issue an order that specifies grounds for the denial of the application for admission. Applicant is not entitled to a hearing before a denial for failure to meet eligibility requirements. An applicant who disagrees with the Board decision may petition the Board under section 13.02. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 13.02. Petitions to Board.

(a) Any person who is aggrieved by any action of the Board involving or arising from the enforcement of this Rule, other than failure to pass the bar examination or a determination that an applicant has not completed the application process for an examination, may petition the Board for such relief as is within the jurisdiction of the Board to grant.

(b) Any such petition must:

(1) Be in writing, under oath;

(2) Be filed with the Executive Director within thirty days after notice of such action by the Board; and

(3) Must state with reasonable particularity the relief which is sought and the grounds therefor.

(c) Any such petition may:

- (1) Be accompanied by such affidavits and other documentary evidence as the petitioner may deem appropriate;
- (2) Be supported by a Memorandum of Law setting forth pertinent authorities and arguments; and
- (3) May ask the Board to set the matter for hearing.
- (d) The Board may order a hearing of any such petition on its own initiative. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 13.03. Hearings Before the Board.

- (a) The Executive Director shall serve notice on the petitioner or the respondent to a show cause order and any other interested parties fixing the time and place of the hearing and indicating the matters to be heard.
- (b) The petitioner or respondent and any other person made a party to the proceeding shall have the right to be represented by counsel and to present evidence and argument with respect to the matters in issue.
- (c) The burden of proof shall be upon the petitioner, or the respondent in the case of a show cause order.
- (d) Any person having a direct interest in the matters in issue in any proceeding may, upon written motion, be allowed to intervene and become a party of record.
- (e) The Board shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which in the judgment of the Board possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs. The Board, however, shall give effect to the rules of privilege recognized by law. The Board may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- (f) All evidence, including records and documents in the possession of the Board of which it desires to avail itself, shall be offered and made a part of the record, and no factual information shall be considered by the Board which is not made part of the record.
- (g) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- (h) The Board may take notice of judicially cognizable facts and, in addition, may take notice of general or technical facts within its specialized knowledge.
- (i) The Board may cause subpoenas to be issued for such witnesses as any party may in good faith and for good cause shown request in writing.
- (j) The Executive Director shall arrange for the presence of a court reporter to transcribe any oral hearing. The per diem charge of such reporter shall be paid by the party requesting the hearing, or, in the case of a show cause order, by the Board. In its discretion, the Board may waive the presence of a reporter and use an electronic or similar recording device. At the direction of the Board, or at the request of any party, a transcription of the hearing shall be made, and the transcription shall be incorporated in the record, if made. The party requesting the transcription shall bear the cost thereof. If the Board elects to transcribe the proceedings, any party shall be provided copies thereof upon payment to the Board of a reasonable compensatory charge.

(k) At the direction of the Board and by agreement of the parties, all or part of a hearing may be conducted by telephone, or other electronic means, if each party has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(l) Any member of the Board may hold hearings when authorized by the Board to do so, but any decision shall be made by a majority of the Board. Any member participating in the decision without being present for the hearing shall read the transcript of the proceedings and the entire record before the Board. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 13.04. Default.

(a) If a party fails to respond to a show cause order, the Board shall hold that party in default, serve a notice of default on that party, and after the period stated in that notice, enter an order taking such action as the Board deems appropriate.

(b) If a party fails to appear at a hearing, the Board shall proceed with the hearing in the absence of that party.

(c) A party who has been held in default under paragraph (a), above, may file a petition for setting aside that default within fifteen days after the entry of an order based on that default, which petition shall state with particularity the grounds thereof. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 13.05. Costs. The Board may require payment of or security for the costs and expenses of any hearing before the Board, in such a manner as it deems reasonably compensatory. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 13.06. Decisions of Board. The Board's decision on any hearing before it shall be made in writing and a copy thereof shall be mailed or emailed to all parties of record. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 13.07. Informal Disposition. Unless precluded by law or by this Rule, informal disposition may be had of any matter before the Board by stipulation, agreed settlement, or consent order. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 13.08. Motions and Other Matters Preliminary to Hearing.

(a) Any party who desires to raise any matter preliminary to the hearing or to obtain any order from the Board before the hearing shall do so by motion, which shall be made in writing, shall state with reasonable particularity the grounds therefor, and shall set forth the relief or order sought.

(b) Any member of the Board may dispose of any motion, subject to the right of review by the entire Board. [Amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

ARTICLE XIV—REVIEW OF BOARD DECISIONS

Sec. 14.01. Petition for Review. Any person aggrieved by any action of the Board may petition the Supreme Court for a review thereof as under the common law writ of certiorari, unless otherwise expressly precluded from doing so under this Rule. A petition filed under this section shall be made under oath or on affirmation and shall state that it is the first application for the writ. See Tenn. Code Ann. §§ 27-8-104(a) and 27-8-106. On the grant of the writ, the Executive Director shall certify and forward to the Clerk of the Supreme Court a complete record of the proceedings before the Board in that matter. Any such petition must be filed within sixty days after entry of the order of the Board. The Board shall have thirty days after filing of any such petition within which to file a response. [As amended by order entered June 22, 1988; by order filed April 15, 1999, effective May 1, 1999; and by order filed May 2, 2011; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 14.02. Costs. The Supreme Court may make such orders as it may consider appropriate with respect to the payment of or security for costs and other expenses of hearings before the Court. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 14.03. Exhaustion of Board Remedies. The Supreme Court will entertain no application or petition from any person who may be affected directly or indirectly by this Rule unless that person has first exhausted his remedy before the Board. [Amended by order filed December 21, 2015, effective January 1, 2016.]

Sec. 14.04. No Review of Failure to Pass Bar Examination. The only remedy afforded for a grievance for failure to pass the bar examination shall be the right to re-examination as herein provided [Amended by order filed December 21, 2015, effective January 1, 2016.]

Cross-References. Attorneys, qualification and admission to practice, T.C.A. §§ 23-1-101 — 23-1-109.

Law Reviews. Sherman Antitrust Act —

State Action Immunity — Bar Examiners' Liability, 52 Tenn. L. Rev. 525 (1985).

Supreme Court Rule 7 — Licensing of Attorneys, 20 No. 1 Tenn. Bar J. 11 (1984).

NOTES TO DECISIONS

ANALYSIS

1. Practice of Law.
2. —Corporations.
3. Purpose.

1. Practice of Law.

An untrained individual should not try to represent a third party whose success or failure may depend on the proper observance of the many rules, such as those governing the content of the record, that apply to trial and

appellate practice. Third Nat'l Bank v. Celebrate Yourself Prods., Inc., 807 S.W.2d 704 (Tenn. Ct. App. 1990).

2. —Corporations.

A corporation cannot practice law, nor can it employ a licensed practitioner to practice for it. Third Nat'l Bank v. Celebrate Yourself Prods., Inc., 807 S.W.2d 704 (Tenn. Ct. App. 1990).

When a corporation is a party to a lawsuit, the statutes regulating the practice of law imply a representation that is distinct from an

officer or other corporate employee. Third Nat'l Bank v. Celebrate Yourself Prods., Inc., 807 S.W.2d 704 (Tenn. Ct. App. 1990).

3. Purpose.

The purpose of the statutes regulating the practice of law is to prevent the public's being

preyed upon by those who, for valuable consideration, seek to perform services which require skill, training and character, without adequate qualifications. Third Nat'l Bank v. Celebrate Yourself Prods., Inc., 807 S.W.2d 704 (Tenn. Ct. App. 1990).

ARTICLE XV—SURRENDER OF LAW LICENSE.

Sec. 15.01. Surrender of Law License.

(a) An attorney licensed to practice in Tennessee may petition the Supreme Court to accept the surrender of his or her license to practice law.

(b) The petition shall be filed in the office of the Clerk of the Supreme Court in Nashville. The petitioner shall contemporaneously serve copies of the petition upon the Chief Disciplinary Counsel of the Board of Professional Responsibility, and the Executive Director of the Commission on Continuing Legal Education and Specialization.

(c) The petition shall state under oath:

(1) the reason(s) for the requested surrender;

(2) whether disbarment, suspension, disciplinary, or other administrative action of any nature is in effect or pending as to the petitioner;

(3) whether there is a potential grievance, complaint, disciplinary or administrative action of any nature in any jurisdiction which may likely be filed against the petitioner;

(4) whether the attorney is currently on probation, under criminal charge(s), or under investigation for criminal charge(s), of any nature in any jurisdiction.

(d) The Supreme Court may decline to consider any petition during the pendency of any of the matters described herein above.

(e) The attorney shall attach the law license to the petition or shall attach an affidavit fully explaining why the license is not attached. [Article added by order entered April 11, 1996; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019; amended by order filed and effective August 6, 2020.]

Sec. 15.02. Supreme Court Decision. Upon consideration of the petition, the Supreme Court may grant the petition or deny it. If the Supreme Court grants the petition, the order accepting the surrender shall state the date the surrender shall take effect. The Clerk of the Supreme Court shall mail a copy of the order to the surrendering attorney, the Board of Professional Responsibility, the Board, and the Commission on Continuing Legal Education and Specialization. [Article added by order entered April 11, 1996; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 15.03. Effect of Order Accepting Surrender of License. As of the effective date of the order accepting surrender, the attorney shall have no license to practice law in this state. After the effective date of the order, this

license shall not be reinstated, and the attorney may not be licensed to practice law in Tennessee until he or she applies for a law license in Tennessee and meets the requirements of this Rule. [Article added by order entered April 11, 1996; amended by order filed December 21, 2015, effective January 1, 2016; and amended by order filed and effective March 29, 2019.]

ARTICLE XVI—REINSTATEMENT OF LAW LICENSE

Sec. 16.01. In accordance with Tenn. Sup. Ct. R. 9, § 30, and R. 21, § 7, an attorney who has been suspended, disbarred or assumed inactive status and who wishes to take the bar examination to establish proof of competency and learning in the law must first petition for reinstatement to Tenn. Sup. Ct. R. § 30 and/or file an application for reinstatement pursuant to Tenn. Sup. Ct. R. 21 § 7. If the Supreme Court orders the applicant's successful completion of the bar exam, then the applicant must apply for examination as provided in section 3.01 of this Rule, and attach to the application a disclosure that the application is being submitted pursuant to this section. [Amended by order filed and effective December 1, 2016; and amended by order filed and effective March 29, 2019.]

Sec. 16.02. Applicant's bar examination scores will not be posted but will be released directly to the applicant. [Added by order filed December 21, 2015, effective January 1, 2016.]

Sec. 16.03. Submitting an application to take the bar examination constitutes the applicant's permission to allow the Board to release the results of the bar examination and the background investigation directly to the Board of Professional Responsibility. [Added by order filed December 21, 2015, effective January 1, 2016.]

ARTICLE XVII—TENNESSEE-APPROVED LAW SCHOOLS

Sec. 17.01. Tennessee Law Schools.

(a) Tennessee-Approved Law Schools Not Seeking ABA Accreditation.

Tennessee law schools that are not ABA-accredited or seeking ABA accreditation and that are currently approved by this Board and such approval is not subject to obtaining full ABA accreditation ("Tennessee-Approved Law School") shall remain approved so long as the school continues to comply with the requirements of this Rule as it may be amended and any standards adopted by the Board and approved by the Supreme Court.

(b) Law Schools in Tennessee Seeking ABA-Accreditation. (1) The Board may recommend approval to the Supreme Court of any law school in Tennessee for the purpose of allowing its graduates to be eligible for admission in Tennessee if the law school is seeking provisional accreditation, and pending full accreditation by the ABA. The Supreme Court shall certify or deny the Board's recommendation to approve the law school by written order.

(2) The recommendation of the Board to the Supreme Court shall be subject to a site evaluation as provided in section 17.03. Until the ABA grants such provisional accreditation, the law school shall be considered a Tennessee-

Approved Law School, as provided herein.

(3) Law schools in Tennessee that are seeking provisional accreditation from the ABA but that are not yet provisionally approved are subject to all of the requirements of a Tennessee-Approved Law School.

(4) Graduates of law schools provisionally or fully accredited by the ABA ("ABA Law School") are eligible to seek admission in Tennessee.

(c) Law Schools Seeking Approval of Substantial Change. Whether or not physically located in Tennessee, if an ABA Law School requests approval of a substantial change from the ABA for purposes of opening a law school branch in Tennessee or moving an ABA Law School to Tennessee, the branch or relocated law school shall be treated as a new law school in Tennessee seeking ABA accreditation as provided in paragraph (b), above.

(d) Graduates of Tennessee-Approved Law Schools. Graduates of Tennessee-Approved Law Schools are eligible to seek admission in Tennessee.

(e) Notices from the ABA Regarding Compliance with Standards or Status of Accreditation. (1) Reporting Requirements for ABA Law Schools in Tennessee. Upon receipt of notice from the ABA that an ABA-accredited law school located in Tennessee is out of compliance with the ABA standards or that the accreditation status of the law school has changed, the law school shall furnish to the Board copies of the notice and such documentation as the Board may request, including self-study analyses and evaluation reports, prepared, completed or received in connection with such school's accreditation status with the ABA. All documentation provided to the Board shall be confidential in order to ensure a frank, candid exchange of information.

(2) ABA Law Schools that are not approved for provisional accreditation by the ABA, do not achieve full accreditation or lose their ABA accreditation will not be recommended for approval to the Supreme Court by the Board until a new application or similar process for provisional or renewed accreditation has been initiated with the ABA, subject to a site evaluation as provided in section 17.03, below.

(f) Statement of Accreditation or Approval Status. (1) In its catalogs or other informational material distributed to prospective students, a law school shall state whether it is accredited by the ABA or has been approved by the Board pursuant to section 17.01 of this Rule.

(2) Any law school in Tennessee that falsely advertises in its catalog or otherwise that it has been accredited by the ABA or approved by the Board shall be recognized by the Board as a substandard school and will be so classified and disapproved. Students of a substandard school shall not be eligible for admission in Tennessee.

(g) Substandard Law Schools. (1) Any law school located in or seeking to locate in Tennessee (whether offering a full-time or part-time curriculum), which permits the enrollment of students without first having obtained the written approval of the Supreme Court as provided in section 17.01, shall be classified as a substandard school.

(2) Any ABA-Accredited Law School or Tennessee-Approved Law School that loses its accreditation or provisional approval and does not seek reinstatement of such accreditation or provisional approval shall be classified as a substandard school.

(3) Graduates at law schools that are not ABA-accredited or Tennessee-Approved shall be barred from admission in Tennessee unless the student meets the requirements of section 2.02(d) or section 7.01 of this Rule. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.02. Functions of the Board in Review and Regulation of Tennessee-Approved Law Schools.

(a) For any Tennessee-Approved Law School as defined in section 17.01:

(1) the Board shall determine whether the law school is effectively achieving its mission and objectives, which includes meeting educational standards similar to those defined in the ABA Standards and any standards adopted by this Board. Upon determination by the Board that the law school has met the required standards, the Board shall recommend provisional or continued approval of the law school to the Supreme Court;

(2) the Board is authorized to make inquiry to the school and respond to inquiry by the school and to adopt such additional standards as in its judgment the educational needs of the school may justify, subject to the Supreme Court's approval;

(3) if the Board has reasonable cause to believe that a law school does not comply with the standards in section 17.02(a)(1) of this Rule, and/or the school is not effectively achieving its mission and objectives, it shall inform the school of its apparent noncompliance or failure to effectively achieve its mission or objectives and follow the procedures in sections 17.03 through 17.10 of this Rule; and

(4) the Board is authorized to:

(A) require a school to furnish such information, including periodic reports, as it deems reasonably appropriate for carrying out the Board's responsibilities; and

(B) investigate a law school in accordance with section 17.03 of this Rule, provided that such investigation shall be confidential to ensure a frank, candid exchange of information and evaluation.

(b) **Self-Study.** (1) The dean and faculty of a Tennessee-Approved Law School shall develop and periodically revise a written self-study, including an evaluation of the following topics:

(A) the continuing relevance of the school's mission or objectives;

(B) the effectiveness of the program of legal education;

(C) the appropriateness of the school's admission policies;

(D) the significance of the trend in rates of graduation and attrition;

(E) the significance of the trends in the pass/fail rate on the bar examination;

(F) the strengths and weaknesses of the school's policies;

(G) goals to improve the educational program; and

(H) means to accomplish unrealized goals.

(2) The self-study shall be completed every seven years or earlier upon written request of the Board.

(3) **Certification of Compliance.** The dean and the chairperson of the board of directors of the law school shall certify annually in writing to the Board that the school is effectively achieving its mission and objectives or, if not effectively

achieving its mission or objectives, identify areas of noncompliance or other deficiencies, as well as its intention and plan of action to attain compliance.

(c) **Investigation and Evaluation by the Board.** The Board may visit, investigate, and/or evaluate a Tennessee-Approved Law School, from time to time, with respect to the adequacy of its facilities, faculty, and course of study. The refusal of any such school to cooperate or participate in the conduct of such evaluation shall be reported to the Supreme Court, which may, after hearing, take such actions as the facts may justify. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.03. Site Evaluation of Tennessee-Approved Law Schools.

(a) A site evaluation by the Board shall be conducted before approval of any law school in Tennessee.

(b) For a Tennessee-Approved Law School, a site evaluation by the Board shall be conducted in the third year following the granting of approval and every seventh year thereafter. The Board may order additional site evaluations of a school when special circumstances warrant.

(c) The Board shall arrange for the site evaluation or inspection of the law school by a team of qualified and objective persons who have no conflicts of interest as defined in section 17.10 of this Rule. The cost of the site evaluation or inspection, including the fees of any consultants engaged as part of the Board's site evaluation team, shall be paid by the law school.

(d) Before the site evaluation, the law school shall furnish to the Board and members of the site evaluation team:

(1) For a law school seeking provisional accreditation from the ABA or approval of a substantial change as provided in section 17.01(b), the completed application submitted to the ABA;

(2) the current self-study undertaken by the dean and faculty; and

(3) any complaints that the law school is not in compliance with the standards in section 17.02(a)(1).

(e) The Board shall schedule the site evaluation of the law school to take place during the academic year at a time when regular academic classes are being conducted. A site evaluation usually requires several days, as classes are visited, faculty quality assessed, admissions policies reviewed, records inspected, physical facilities examined, the library assessed, information reviewed, and consultations held with the chairperson of the board of directors of the law school, officers of the institution, the dean of the law school, members of the law school faculty, professional staff, law students, and members of the legal community. In the case of a law school seeking approval, such visit shall be scheduled within three months after receipt by the Board of an application for approval.

(f) Following a site evaluation, the team shall promptly prepare a written report based upon the site evaluation. The team shall not determine compliance or noncompliance with the standards, but shall report facts and observations that will enable the Board and the Supreme Court to determine compliance. The report of the team should give as much pertinent information as feasible.

(g) The team shall promptly submit its report to the Board. After reviewing the report, the Board shall transmit the report to the chairperson of the board

of directors of the law school and the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter transmitting the report, the Board shall advise that any response to the report must be received by a specified date at least thirty days from the date the Board mailed the report to the school, unless the school consents to a shorter time period.

(h) Following receipt of the school's response to the site evaluation report, the Board shall forward a copy of the report with the school's response to members of the Board and the site evaluation team.

(i) The Board may not consider any additional information submitted by the school after the school's response to the report has been received by the Board, unless

(1) the information is received in writing by the Board at least fifteen days before the Board meeting at which the report is scheduled to be considered, or

(2) for good cause shown, the president of the Board authorizes consideration of the additional information that was not received in a timely manner.

(j) Upon the completion of the procedures, the Board shall consider the law school's evaluation and determine whether the school is in compliance with the standards and is effectively achieving its mission and objectives.

(k) A request for postponement of a site evaluation will be granted only if the law school is in the process of moving to a new physical facility or if extraordinary circumstances exist which would make it impossible for the scheduled site evaluation to take place. The postponement shall not exceed one year. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.04. Action Concerning Apparent Noncompliance with Standards or Deficiencies in Mission.

(a) If the Board has reasonable cause to believe that a Tennessee-Approved Law School has not complied with the standards in section 17.02(a)(1) of this Rule or is not effectively achieving its mission or objectives, the Board shall inform the school it is not in compliance and request the school to furnish by a date certain further information about the matter and about action taken to bring the school in compliance with the standards or correct the deficiencies. The school shall furnish the requested information to the Board within the time prescribed.

(b) If upon a review of the information furnished by the law school in response to the Board's request and other relevant information, the Board determines that the school has not demonstrated compliance with the standards or is not effectively achieving its mission or objectives, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, placed on probation, removed from the list of law schools approved by the Board or be subject to other appropriate action.

(c) If the Board finds that a law school has failed to comply with the standards or is not effectively achieving its mission or objectives by refusing to furnish information or to cooperate in a site evaluation, the school may be required to appear at a hearing before the Board to be held at a specified time and place to show cause why the school should not be required to take

appropriate remedial action, placed on probation, removed from the list of law schools approved by the Board or be subject to other appropriate action.

(d) The Board shall give the law school at least thirty days' notice of the show cause hearing. The notice shall specify the school's apparent noncompliance with the standards or its failure to effectively achieve its mission or objectives and state the time and place of the hearing. For good cause shown, the president of the Board may grant the school additional time, not to exceed thirty days. Both the notice and the request for extension of time must be in writing. The Board shall send the notice of hearing to the dean of the school by certified or registered U.S. mail. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.05. Fact Finder.

(a) The president of the Board may appoint a fact finder to elicit facts relevant to any matter before the Board. The fees of the fact finder and any reasonable and necessary expenses incurred shall be paid by the law school.

(b) The Board shall furnish the fact finder with a copy of the most recent site evaluation report, any action letters written subsequent to the most recent site evaluation report, notice of hearing, and other relevant information.

(c) Following the fact finding visit, the fact finder shall promptly prepare a written report. The fact finder shall not determine compliance or noncompliance with the standards or whether the school is effectively achieving its mission or objectives, but shall report facts and observations that will enable the Board to determine compliance or deficiencies. The report of the fact finder should give as much pertinent information as feasible.

(d) The fact finder shall promptly submit the report to the Board. After reviewing the report, the Board shall transmit the report to the dean of the law school in order to provide an opportunity to make factual corrections and comments. In the letter of transmittal of the report, the Board shall include the date on which the Board will consider the report. The Board shall further advise the school as to the date upon which their response to the report must be received by the Board, which date shall be at least fifteen days before the date of the meeting at which the Board will consider the report. The school shall be given at least thirty days to prepare its response to the report, unless the school consents to a shorter time period. The thirty-day period shall run from the date on which the Board mailed the report to the school. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.06. Hearing on Show Cause Order.

(a) The Board shall have available for review at the show cause hearing:

- (1) the fact finder's report, if any;
- (2) the most recent site evaluation report;
- (3) any site evaluation questionnaire;
- (4) any action letters written subsequent to the most recent site evaluation report, which letters direct the school to rectify noncompliance or correct deficiencies;
- (5) notice of the Board hearing; and
- (6) other relevant information.

(b) Representatives of the law school, including legal counsel, may appear at the hearing and submit information to demonstrate that the school is currently in compliance with all of the standards and is effectively achieving its mission or objectives or to present a reliable plan for bringing the school into compliance with all of the standards and to correct deficiencies within a reasonable time.

(c) The Board may invite the fact finder, if any, and the chairperson of the board of directors of the law school or other member of the most recent site evaluation team to appear at the hearing. The law school shall reimburse the fact finder and site evaluation team member for reasonable and necessary expenses incurred in attending the hearing.

(d) After the hearing, the Board shall determine whether the law school is in compliance with the standards and whether it is effectively achieving its mission and objectives and, if not, it shall direct the law school to take remedial action or shall impose sanctions, as appropriate.

(1) Remedial action may be ordered pursuant to a reliable plan for bringing the school into compliance with all of the standards and to help it achieve its mission and objectives.

(2) If matters of noncompliance or deficiencies are substantial or have been persistent, then the Board may recommend to the Supreme Court that the school be subjected to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance or to correct deficiencies.

(3) If matters of noncompliance or deficiencies are substantial or have been persistent, and the school fails to present a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board may recommend to the Supreme Court that the school be removed from the list of approved schools.

(e) If the Board determines that the law school is in compliance and has no deficiencies, it shall conclude the matter by adopting an appropriate resolution, a copy of which shall be transmitted to the dean of the school by the Board. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.07. Confidentiality of Approval and Evaluation Procedures.

The proceedings set forth in sections 17.02, 17.03, 17.04, 17.05, and 17.06 of this Rule shall be confidential to ensure a frank, candid exchange of information. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.08. Supreme Court Consideration of Board Recommendation for Imposition of Sanctions.

(a) If the Board determines that a Tennessee-Approved Law School is not in compliance with the standards or has effectively failed to achieve its mission and objectives and recommends that the school be placed on probation or removed from the list of Tennessee-Approved Law Schools, the Board shall notify the Supreme Court and request a hearing. The Board shall notify the dean of the school of the time and place of the Supreme Court hearing, which shall be open to the public.

(b) The Board shall file with the Supreme Court in the public record the Board's written recommendation, the fact finder's report, if any, the most

recent site evaluation report, and any action letters to the school written subsequent to the most recent site evaluation report.

(c) Representatives of the law school, including legal counsel, may appear at the Supreme Court hearing at which the Board's recommendations are considered. The president of the Board (or his or her designee) shall present the Board's findings, conclusions, and recommendations.

(d) The Supreme Court shall determine whether to affirm the Board's findings and conclusions, and whether to adopt the Board's recommendations. The Board's findings and conclusions shall be affirmed if there is substantial and material evidence to support them, unless the school presents new information that demonstrates to the Supreme Court that the school is in compliance with the standards.

(e) The Supreme Court may direct the law school to take appropriate remedial action or subject it to sanctions other than removal from the list of approved law schools regardless of whether the school has presented a reliable plan for bringing the school into compliance with all of the standards.

(f) The Supreme Court shall render its decision by written order. If the decision is adverse to the law school, the order shall provide reasons for the decision.

(g) If the Supreme Court imposes sanctions in the absence of a reliable plan for bringing the school into compliance with all of the standards or to correct deficiencies, the Board shall monitor the steps taken by the school to come into compliance. If the Court imposes sanctions pursuant to a reliable plan for bringing the school into compliance with the standards or to correct deficiencies, the Board shall monitor the steps taken by the school for meeting its plan. At any time that the school is not making progress toward compliance with all of the standards or to correct deficiencies, or at any time that the school is not meeting the obligations of its plan, or if at the end of a period of time set by the Court for coming into compliance the school has not achieved compliance with all of the standards or corrected all deficiencies, the Board shall forward a recommendation that the school be removed from the list of approved schools. This recommendation shall be heard by the Court under the procedures of section 17.08 of this Rule but the only issue for Court consideration will be whether the school has met the terms of its plan or is in compliance with all of the standards or has corrected deficiencies.

(h) At any time that the school presents information on which the Board concludes that the school is in full compliance with the standards or has corrected its deficiencies, the Board shall recommend to the Supreme Court that the school be taken off probation. This recommendation will be heard by the Court under the procedures of section 17.08 of this Rule. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.09. Maximum Period for Compliance with Remedial or Probationary Requirements. Upon communication to a law school of a final decision that it is not in compliance with the standards or has failed to effectively achieve its mission or objectives and informing it that it has been ordered to take remedial action or has been placed on probation, the school

shall have a period as set by the Supreme Court to come into compliance. The period may not exceed two years unless such time is extended by the Supreme Court for good cause shown. [Adopted by order filed and effective March 29, 2019.]

Sec. 17.10. Conflicts of Interest. Members of the Board and any site evaluation team, as well as any fact finders appointed under the provisions of sections 17.03 and 17.05, should avoid any conflict of interest or perceived conflict of interest arising because a person has an “associational interest” in the law school or the law school program under review by the Board or the Supreme Court. Alumni, faculty, and directors of the school under review are deemed to have an associational interest in the school and should recuse themselves from the process of review. Former faculty and board members who have terminated their relationship with the school less than five years before to the site inspection, evaluation, or review process are also deemed to have an associational interest in the school and should recuse themselves from the process of review. [Adopted by order filed and effective March 29, 2019.]

Rule 8. Rules of Professional Conduct.

Compiler’s Notes. These rules, effective January 1, 2011, supersede the previously adopted Tenn. Sup. Ct. R. 8, Rules of Professional Conduct that became effective March 1, 2003.

Law Reviews. A Primer on Professionalism for Doctrinal Professors, 81 Tenn. L. Rev. 277 (2014).

Essay: Not Your Father’s Legal Profession:

Technology, Globalization, Diversity, and the Future of Law Practice in the United States, 44 U. Mem. L. Rev. 645 (2014).

Hearing Stories Already Told: Successfully Incorporating Third Party Professionals into the Attorney — Client Relationship, 80 Tenn. L. Rev. 1 (2012).

PREAMBLE AND SCOPE

PREAMBLE: A LAWYER’S RESPONSIBILITIES

[1] A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good. Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.

[2] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[3] As a representative of clients, a lawyer performs various functions. As an advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.

[4] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a

dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, RPC 1.12 and RPC 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *See* RPC 8.4.

[5] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[6] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[7] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[8] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[9] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[10] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

[11] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[12] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[13] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[14] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[15] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus

partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[16] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[17] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[18] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under RPC 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. *See* RPC 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[19] Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may differ from those of lawyers in private client-lawyer relationships. Certain government lawyers may be authorized to represent several government agencies, officers, or employees in legal controversies in circumstances where a private lawyer could not represent multiple private clients. Government lawyers in Tennessee are also subject to the Open Meetings Act as interpreted by the Tennessee courts. Further, they may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate the powers and responsibilities of government lawyers as set forth under federal law or under the Constitution, statutes, or common law of Tennessee. The resolution of any conflict between these Rules and the responsibilities or authority of government lawyers under any such legal provisions is a question of law beyond the scope of these Rules.

[20] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and

seriousness of the violation, extenuating factors, and whether there have been previous violations.

[21] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, in some circumstances, a lawyer's violation of a Rule may be relevant in determining whether there was also a breach of the applicable standard of conduct.

[22] Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

[23] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

[24] Standard Citation Format: Citations to each Rule of Professional Conduct ("RPC") shall be in the following format: Tenn. Sup. Ct. R. 8, RPC

Law Reviews. Agreements for Cooperation in Criminal Cases (Graham Hughes), 45 Vand. L. Rev. 1 (1992).

An Overview of Formal Ethics Opinions in Tennessee, 1980-1988 (William W. Hunt III), 19 Mem. St. U.L. Rev. 275 (1989).

A Primer on Professionalism for Doctrinal Professors, 81 Tenn. L. Rev. 277 (2014).

Be Led Not into Temptation: Ethics Lessons from The Rainmaker, 26 U. Mem. L. Rev. 1325 (1996).

Beware of the Adversarial Shield: Possible Roles for Christian Ethics in Legal Ethics (Ju-

lian H. Wright, Jr.), 23 Mem. St. U.L. Rev. 573 (1993).

Certification Proposal Streamlined by Dropping Required CLE Disclosure in Advertising: Will Tennessee Have Certification by 1993? (Lawrence R. Ahern III), 28 No. 5 Tenn. B.J. 24 (1992).

Civil Procedure — Andrews v. Bible: Tennessee Rule of Civil Procedure 11 Is Inapplicable to Failure to Supplement: Should the Language of Rule 11 Be Amended?, 23 Mem. St. U.L. Rev. 701 (1993).

Clashes With Judges Can't Always Be Attrib-

uted to "Robitis" (Hon. R. Vann Owens), 28 No. 5 Tenn. B.J. 39 (1992).

Client Trust Fund Accounting A Practical Guide, 23 Mem. St. U.L. Rev. 649 (1993).

Collaborative Law — A Method for Madness, 23 Mem. St. U.L. Rev. 667 (1993).

Essay: Not Your Father's Legal Profession: Technology, Globalization, Diversity, and the Future of Law Practice in the United States, 44 U. Mem. L. Rev. 645 (2014).

Ethical Obligations of Judges (Joe G. Riley), 23 Mem. St. U.L. Rev. 507 (1993).

Ethical Prohibitions Against a Lawyer's Serving as Both Advocate and Witness (Barbara J. Moss), 23 Mem. St. U.L. Rev. 555 (1993).

Ethics — Collier v. Griffith — Determining Whether Tennessee State Court Judges Should Recuse Themselves from Cases which Involve Attorneys in Leadership Positions in Their Campaigns for Re-election, 23 Mem. St. U.L. Rev. 741 (1993).

Ethics — Petty v. Privette: Exclusion of Attorney Liability in the Area of Estate Administration, 23 Mem. St. U.L. Rev. 687 (1993).

Ethics — Spiegel v. Thomas, Mann & Smith: Financial Disincentives in Employment Compensation Agreements, 23 Mem. St. U.L. Rev. 717 (1993).

Ex Parte Communications with Corporate Employees: Still an Open Issue in Tennessee (Eugene N. Bulso, Jr.), 31 No. 2 Tenn. B.J. 18 (1995).

Guide to Resources and Materials on Professional Responsibility Issues (Lucian T. Pera), 23 Mem. St. U.L. Rev. 589 (1993).

Hard Blows and Foul Ones: The Limited Bounds on Prosecutorial Summation in Tennessee (Karen E. Holt), 58 Tenn. L. Rev. 117 (1990).

Lawyer Advertising and Solicitation: An Overview of Tennessee Law, 23 Mem. St. U.L. Rev. 601 (1993).

Lawyers As Officers of the Court (Eugene R. Gaetke), 42 Vand. L. Rev. 39 (1989).

Legal Ethics & Legal Fees (John J. Thomason), 34 No. 4 Tenn. B.J. 33 (1998).

Legal Malpractice Liability for Trial Tactical Decisions (William H. Haltom, Jr.), 23 No. 4 Tenn. B.J. 13 (1987).

Loose Canons. A National Survey of Attorney-Client Sexual Involvements Are There Ethical Concerns: (Dan S. Murrell, J.L. Bernard, Lisa K. Coleman, Leborah L. O'Laughlin, Robert B. Gaia), 23 Mem. St. U.L. Rev. 483 (1993).

Nonlegal Regulation of the Legal Profession: Social Norms in Professional Communities, 54 Vand. L. Rev. 1955 (2001).

Privileged and Confidential Information (J. Houston Gordon), 23 Mem. St. U.L. Rev. 565 (1993).

Professional Responsibilities of Lobbyists (William R. Bruce), 23 Mem. St. U.L. Rev. 547 (1993).

Public Opinion of the Legal Profession: A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 503, 505.

Regulation of the Bar in Tennessee (Walter P. Armstrong, Jr.), 53 Tenn. L. Rev. 723 (1986).

Rule 6 Is for All Lawyers (Suzanne Craig Robertson & Elizabeth W. Sims), 39 No. 1 Tenn. B.J. 26 (2003).

Special Ethical Duties for Attorneys Who Hold Public Positions (W.J. Michael Cody), 23 Mem. St. U.L. Rev. 453 (1993).

Statewide Network is Ready to Help (Stephenson Todd), 26 No. 1, Tenn. B.J. 14 (1990).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Crisis in Legal Aid: The Challenges and Some Solutions (Douglas A. Blaze), 39 No. 1 Tenn. B.J. 12 (2003).

The Emerging State Law of Sanctions (Lucian T. Pera), 28 No. 1 Tenn. B.J. 24 (1992).

The Professional Responsibility of the Law Professor: Three Neglected Questions (Monroe H. Freedman), 39 Vand. L. Rev. 275 (1986).

The Unauthorized Practice of Law and The Federal Bankruptcy Section 341(a) Meeting of Creditors, 23 Mem. St. U.L. Rev. 629 (1993).

Time for a Change? The Proposed Tennessee Rules of Professional Conduct (Carl A. Pierce and Lucian T. Pera), 34 No. 2 Tenn. B.J. 23 (1998).

Use of Alternative Dispute Resolution in Employment-Related Disputes, 26 Mem. St. U.L. Rev. 1131 (1996).

Your Ethics Roadmap (Carl A. Pierce and Lucian T. Pera), 38 No. 12 Tenn. B.J. 14 (2002).

1982-2002: An Ethical Odyssey With Tennessee Lawyers (Lance B. Bracy), 23 Mem. St. U.L. Rev. 525 (1993).

Disciplinary Board Opinions. Potential ethical conflicts and ethical responsibilities of attorneys employed in programs administered by Department of Human Services pursuant to Title IV-D of the Federal Social Security Act. Formal Ethics Opinion 90-F-123 (9/14/90).

Lawyers listing areas of practice on the Internet, including law directories or other Web sites available to the public, should comply with the certification of specialization disclosure requirements of former DR 2-101(C). Formal Ethics Opinion 99-F-144 (6/14/99).

NOTES TO DECISIONS

1. Expert In the Law.

Attorney argued that the trial court erred in not allowing him to testify as an expert in the area of his own disciplinary proceedings, but this was rejected, as the trial court did not act arbitrarily in determining that the attorney was not qualified; mere personal knowledge about his disciplinary proceedings did not qualify him, and although he was technically

considered an expert in the law, his knowledge of the disciplinary process would not have assisted a trial judge, who is an expert in the law himself, plus the attorney's bias indicated a lack of trustworthiness that provided additional grounds for excluding his own opinion. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

CHAPTER 1

THE CLIENT-LAWYER RELATIONSHIP

Rule 1.0. Terminology. — (a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation, government agency, or other organization.

(d) “Fraud” or “fraudulent” denotes an intentionally false or misleading statement of material fact, an intentional omission from a statement of fact of such additional information as would be necessary to make the statements made not materially misleading, and such other conduct by a person intended to deceive a person or tribunal with respect to a material issue in a proceeding or other matter.

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Knowing,” “known,” or “knows” denotes actual awareness of the fact in question. A person's knowledge may be inferred from circumstances.

(g) “Partner” denotes a partner in a law firm organized as a partnership or professional limited liability partnership, a shareholder in a law firm organized as a professional corporation, a member in a law firm organized as a professional limited liability company, or a sole practitioner who employs other lawyers or nonlawyers in connection with his or her practice.

(h) “Reasonable” or “reasonably,” when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know,” when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) “Screening” and “screened” denote the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) “Substantial” or “substantially,” when used in reference to degree or extent, denotes a material matter of clear and weighty importance.

(m) “Tribunal” denotes a court (including a special master, referee, judicial commissioner, or other similar judicial official presiding over a court proceeding), an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(o) “Material” or “materially” denotes something that a reasonable person would consider important in assessing or determining how to act in a matter. Amended by order filed March 6, 2017, effective upon filing.

Comment.

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client’s informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying pur-

pose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including a governmental agency, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

[5] [Comment intentionally omitted]

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. *See, e.g.*, RPCs 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. *See* RPCs 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. *See, e.g.*, RPCs 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Screening

[8] This definition applies to situations where screening of a personally disqualified

lawyer is permitted to remove imputation of a conflict of interest under RPCs 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel. Although this Rule does not require that the personally disqualified lawyer be prohibited from sharing in any fee generated by the representation in question, such a prohibition can be considered in determining the effectiveness of the screening procedures employed by the firm. For example, a screened lawyer is not prohibited from receiving a salary or partnership share established by prior independent agreement.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016.

The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's

written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Suddenly Discharged the Combat Continues: Eliminating the Legal Services Gap to Ensure Veterans' Success After Leaving Military Service, 45 U. Mem. L. Rev. 837 (2015).

NOTES TO DECISIONS

1. Consent.

Although a law firm alleged that a former client waived any conflict of interest in a signed engagement letter, an issue existed as to whether the client was provided information concerning the implications of the common representation, including possible effects on loy-

alty, confidentiality and the attorney-client privilege or the potential ill effects of continued representation by counsel of record such that the client could have fully understood the nature of the conflict and its effect. *Culpepper v. Baker*, — S.W.3d —, 2020 Tenn. App. LEXIS 460 (Tenn. Ct. App. Oct. 16, 2020).

Rule 1.1. Competence. — A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Amended by order filed March 6, 2017, effective upon filing.

Comment.

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the asso-

ciation of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to, or consultation or association with, another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See also* RPC 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and the use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* RPC 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also RPCs 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstance, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See RPC 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

Definitional Cross-Reference

"Reasonably" See RPC 1.0(h)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. A Remedy for the Discharge of Professional Employees Who Refuse to Perform Unethical or Illegal Acts: A Proposal in Aid of Professional Ethics (Jon P. Christiansen), 28 Vand. L. Rev. 805.

Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinions, 21 No. 2 Tenn. B.J. 23 (1985).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. It is improper for an attorney to divide his fee with his client. Formal Ethics Opinion 81-F-6 (5/12/81).

An attorney not competent to handle criminal cases shall not accept representation in a criminal case. Formal Ethics Opinion 81-F-24 (12/31/81).

Employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee. Formal Ethics Opinion 85-F-91 (4/29/85).

Ethical propriety of criminal defense lawyers filing motions to suppress without any investigation of facts concerning matters contained therein. Formal Ethics Opinion 88-F-117 (12/15/88).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

NOTES TO DECISIONS

ANALYSIS

1. Appropriate Sanction.
2. Obligations.

1. Appropriate Sanction.

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) did not provide competent representation to the attorney's clients; (3) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; and (4) failed to keep the attorney's clients informed about their cases. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Suspension, not a reprimand as imposed by the hearing panel, was the appropriate sanc-

tion for the attorney's failure to file a delayed notice of appeal for three and a half years, particularly given the attorney's prior disciplinary history, including multiple offenses, the vulnerability of the victim, and the attorney's substantial experience in the practice of law. In *re Walwyn*, 531 S.W.3d 131, 2017 Tenn. LEXIS 457 (Tenn. Aug. 4, 2017).

2. Obligations.

Tennessee Supreme Court's refusal to allow parents to repeatedly challenge orders terminating their rights through ineffectiveness claims does not at all negate the ethical obligations all lawyers have to provide competent representation to a client; these ethical obligations apply in all cases, including civil cases and other quasi-criminal cases. In *re Carrington H.*, 483 S.W.3d 507, 2016 Tenn. LEXIS 49 (Tenn. Jan. 29, 2016).

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer. — (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client about the means by which the client's objectives are to be accomplished. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Comment.**Allocation of Authority Between Client and Lawyer**

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, also must be made by the client. See

RPC 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by RPC 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used

to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal, and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation, subject to the approval of the tribunal, when required. See RPC 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See RPC 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to RPC 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to have diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to RPC 1.14.

Independence From Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting the Scope of the Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too

costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See RPC 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., RPCs 1.1, 1.8, and 5.6.

Criminal, Fraudulent, and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from counseling or assisting a client to engage in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. In some situations the lawyer may be permitted or required by Rule 1.6 to reveal the client's wrongdoing. See RPC 1.6(b)(1) and (c)(1). In any case, however, the lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See RPC 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See RPC 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law, or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. *See* RPC 1.4(a)(5).

Definitional Cross-References

"Fraudulent" *See* RPC 1.0(d)

"Informed consent" *See* RPC 1.0(e)

"Knows" *See* RPC 1.0(f)

"Reasonable" *See* RPC 1.0(h)

"Reasonably should know" *See* RPC 1.0(j)

"Writing" *See* RPC 1.0(n)

Law Reviews. *Attorneys' Liability for Errors of Judgment — At the Crossroads* (Ronald E. Mallen and David W. Evans), 48 *Tenn. L. Rev.* 283.

Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 *Vand. L. Rev.* 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 *No. 3 Tenn. B.J.* 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 *No. 6 Tenn. B.J.* 35 (1989).

Family Law — Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorneys' Fees in Domestic Relation Cases, 26 *U. Mem. L. Rev.* 1575 (1996).

Hearing Stories Already Told: Successfully Incorporating Third Party Professionals into the Attorney — Client Relationship, 80 *Tenn. L. Rev.* 1 (2012).

Resisting the Current, 52 *Vand. L. Rev.* 1015 (1999).

Speaking Truth to Powerlessness, 52 *Vand. L. Rev.* 995 (1999).

Spoliation in the Product Liability Context, 27 *U. Mem. L. Rev.* 663 (1997).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 *No. 1 Tenn. B.J.* 12 (1997).

When Less Legal Service May Mean More Access to Justice (Carl A. Pierce), 41 *No. 2 Tenn. B.J.* 22 (2005).

Disciplinary Board Opinions. An attorney must disclose the intent to record a conversation during a discovery deposition without divulging his reasons or purposes unless inquiry is made by the recorded party. *Formal Ethics Opinion 81-F-14* (7/23/81).

It is improper for a county attorney to counsel the county in preparation of the county budget and also represent the sheriff or deputy sheriffs to increase their budget or salaries. *Formal Ethics Opinion 83-F-53* (8/12/83).

Judge of the county juvenile court representing the county school board in an action against the county commission. *Formal Ethics Opinion 83-F-58* (11/4/83).

The ethical obligation of court appointed counsel when the client insists that counsel not oppose the imposition of the death penalty. *Formal Ethics Opinion 84-F-73* (6/13/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. *Formal Ethics Opinion 84-F-80* (10/17/84).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. *Formal Ethics Opinion 85-F-85* (1/2/85); *Formal Ethics Opinion 85-F-85(a)* (3/4/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. *Formal Ethics Opinion 85-F-100* (9/30/85).

Court-appointed attorneys for minors seeking abortions via judicial bypass of parental consent serves not as guardian ad litem but as advocate for the minor; such counsel must not fail to seek the minor's lawful objective, and has a duty of undivided loyalty to the minor. *Formal Ethics Opinion 96-F-140* (6/13/96).

Concerns of attorneys about ethical responsibilities while employed by a legal services organization intended to provide limited legal services to otherwise pro se litigants. *Formal Ethics Opinion No. 2005-F-151* (6/17/05).

NOTES TO DECISIONS

ANALYSIS

1. Duty to Inform.
2. Appropriate Sanction.
3. Appropriate Advice.

1. Duty to Inform.

Attorney not engaged in rendering legal advice when entering into a contract for the sale of a business was not required to inform sellers of the licensing requirements for real estate

brokers; moreover, there was nothing to indicate that he knew of the existence of these requirements or used this supposed knowledge to his advantage. *Burks v. Elevation Outdoor Adver., LLC*, 220 S.W.3d 478, 2006 Tenn. App. LEXIS 486 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 1176 (Tenn. Dec. 18, 2006).

2. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a

worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

3. Appropriate Advice.

Lawyers may of course offer advice on the legal consequences of a proposed course of conduct and may offer counsel on the meaning or application of the law, but the rules do not permit lawyers to offer advice on how to commit crime with impunity. *In re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Rule 1.3. Diligence. — A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment.

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* RPC 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in RPC 1.16, a lawyer should carry

through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* RPC 1.4(a)(2). Unless otherwise required by law, whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. *See* RPC 1.2; *see also* Tenn. Sup. Ct. R. 13 and 14; Tenn. Ct. Crim. App. R. 12.

Definitional Cross-Reference

"Reasonable" *See* RPC 1.0(h)

Law Reviews. A Remedy for the Discharge of Professional Employees Who Refuse to Perform Unethical or Illegal Acts: A Proposal in Aid of Professional Ethics (Jon P. Christiansen), 28 *Vand. L. Rev.* 805.

Balancing the Budget on the Backs of America's Elderly — Section 4734 of the Balanced Budget Act: Criminalization of the Attorney's Role as Advisor and Counselor, 29 *U. Mem. L. Rev.* 165 (1998).

Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinions, 21 No. 2 Tenn. B.J. 23 (1985).

Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 Vand. L. Rev. 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 No. 3 Tenn. B.J. 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 No. 6 Tenn. B.J. 35 (1989).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

The Essence of Justice: Independent, Ethical, and Zealous Advocacy by Juvenile Defenders, 44 U. Mem. L. Rev. 799 (2014).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. Members of a firm serving as general counsel for the Tennessee Law Enforcement Officers Association are not disqualified from engaging in the practice of criminal law. Formal Ethics Opinion 81-F-18 (8/26/81).

It is improper for a city attorney to defend a person being prosecuted in criminal court by the city police department. Formal Ethics Opinion 81-F-23 (12/31/81).

An attorney not competent to handle criminal cases shall not accept representation in a criminal case. Formal Ethics Opinion 81-F-24 (12/31/81).

Conflict of interest to represent a sheriff for alleged civil rights action and represent criminal defendants where sheriff is material witness. Formal Ethics Opinion 83-F-56 (9/22/83).

A partner or associate of the city attorney is prohibited from representing criminal defendants prosecuted by the city police department. Formal Ethics Opinion 83-F-57 (10/24/83).

Judge of the county juvenile court representing the county school board in an action against

the county commission. Formal Ethics Opinion 83-F-58 (11/4/83).

The ethical obligation of court appointed counsel when the client insists that counsel not oppose the imposition of the death penalty. Formal Ethics Opinion 84-F-73 (6/13/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. Formal Ethics Opinion 85-F-85 (1/2/85); Formal Ethics Opinion 85-F-85(a) (3/4/85).

Settlement of a case and handling of settlement proceeds when attorney is unable to communicate with a client. Formal Ethics Opinion 85-F-90 (3/13/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

Ethical propriety of criminal defense lawyers filing motions to suppress without any investigation of facts concerning matters contained therein. Formal Ethics Opinion 88-F-117 (12/15/88).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

Court-appointed attorneys for minors seeking abortions via judicial bypass of parental consent serves not as guardian ad litem but as advocate for the minor; such counsel must not fail to seek the minor's lawful objective, and has a duty of undivided loyalty to the minor. Formal Ethics Opinion 96-F-140 (6/13/96).

Duties of defense counsel where capital defendant instructs counsel not to investigate or present mitigating evidence. Formal Ethics Opinion 84-F-73(a) (3/16/99).

NOTES TO DECISIONS

ANALYSIS

1. Suspension Proper.
2. Misconduct Found.
3. Findings.
4. Disbarment Proper.
5. Review.
6. Obligations.

1. Suspension Proper.

Forty-five-day suspension of a lawyer's license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer's attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional

Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust

account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Certain standards applied to the facts of the attorney's case, and he had been sanctioned seven times since 1991, including probation which was conditioned on him not engaging in conduct that violated the professional conduct rules, but less than five months later, he did so by engaging in an unacceptable pattern of neglect; suspension for 45 days was proper, not an arbitrary application of the rule, and the penalty was supported by substantial evidence. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Record contained ample evidence of injury or potential injury, as the attorney's conduct in all three cases caused potential injury to his clients; the attorney admitted receiving multiple orders requesting status updates and establishing filing deadlines, he ignored each order, and his actions caused both injury and potential injury to the legal system, and the 30 days' active suspension reflected the consideration of the attorney's mitigating circumstances and was not an abuse of discretion. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

Suspension, not a reprimand as imposed by the hearing panel, was the appropriate sanction for the attorney's failure to file a delayed notice of appeal for three and a half years, particularly given the attorney's prior disciplinary history, including multiple offenses, the vulnerability of the victim, and the attorney's substantial experience in the practice of law. In re *Walwyn*, 531 S.W.3d 131, 2017 Tenn. LEXIS 457 (Tenn. Aug. 4, 2017).

Debtors' attorney violated a number of the Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a

suspension from practice before the court was appropriate. In re *Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

2. Misconduct Found.

Record contained substantial and material evidence that supported the hearing panel's findings that an attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3, 1.4(a) and (b), 3.2, and 8.4(a), and (d) because the court of appeals dismissed the appeal of a case the attorney initiated on behalf of a client for failure to file a timely brief and failure to comply with its previous orders; the client testified that the attorney failed to communicate with her about the appeal and that she only learned the appeal had been dismissed when she contacted the appellate court clerk's office to check on the status of the case. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Panel did not act arbitrarily in determining that the attorney violated the professional conduct rules, as his failure to take any action in response to a client's safe harbor letter, motion to dismiss, and motion for sanctions was neglectful, unprofessional, and exposed his client to the possibility of sanctions, and thus the attorney violated the duty of diligence. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Attorney's contention that his ethical duty never vested was without merit, as the attorney filed a notice of appeal, there was no indication that he filed a motion to withdraw, and even if he had, it likely would have been denied because he was delinquent in his duties as counsel; the attorney's duty of diligence involved continued representation of the client on appeal, which the attorney admittedly did not diligently pursue. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

Hearing panel's finding that an attorney violated Tenn. Sup. Ct. R. 8, DR 1.3 and 1.4, was supported by substantial evidence where it showed that he went to trial on one matter without adequately informing the client of the issues he planned to address and failed to adequately explain how that matter had nothing to do with a collection matter against a plumbing company. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

3. Findings.

Failure to find a violation of the rule regarding meritorious claims does not preclude a finding that an attorney has failed to act with the required diligence. *Mabry v. Bd. of Prof'l*

Responsibility, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

4. Disbarment Proper.

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) did not provide competent representation to the attorney's clients; (3) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; (4) failed to keep the attorney's clients informed about their cases; and (5) failed to cooperate with successor counsel. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

5. Review.

Trial court was well prepared and had a clear understanding of the evidence in the record because its order clearly stated that the trial court made its decision after hearing the pre-

sentation and argument of counsel for the Tennessee Board of Professional Responsibility and the attorney and the record as a whole; the trial court had the entire record in his possession, and it noted the documents and exhibits in the record and detailed its extensive preparation process and review in the matter. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

6. Obligations.

Tennessee Supreme Court's refusal to allow parents to repeatedly challenge orders terminating their rights through ineffectiveness claims does not at all negate the ethical obligations all lawyers have to provide competent representation to a client; these ethical obligations apply in all cases, including civil cases and other quasi-criminal cases. In *re Carrington H.*, 483 S.W.3d 507, 2016 Tenn. LEXIS 49 (Tenn. Jan. 29, 2016).

Rule 1.4. Communication. — (a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action, unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance, unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* RPC 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases, the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[3a] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the

means by which the client's objectives are to be accomplished. This Rule, however, does not attempt to specify the lawyer's duties when the lawyer and client disagree about the means to be used to accomplish the client's objectives. Disagreements between a lawyer and client about those means must be worked out by the lawyer and client within a framework defined by the law of agency, the right of the client to discharge the lawyer and the right of the lawyer to withdraw from the representation if the lawyer has a fundamental disagreement with the client. *See* RPC 1.2, Comment [2].

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer or member of the lawyer's staff should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in RPC 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or has diminished capacity. *See* RPC 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its mem-

bers about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* RPC 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in withholding or delaying transmission of information to the client, including, for example, when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Other applicable law, including rules or court orders governing litigation, may provide that information supplied to a lawyer may not be disclosed to the client. RPC 3.4(c) directs compliance with such rules or orders.

Definitional Cross-References

"Informed consent" *See* RPC 1.0(e)

"Knows" *See* RPC 1.0(f)

"Reasonable" and "reasonably" *See* RPC 1.0(h)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appen-

dix. The amendments shall take effect immediately upon the filing of this Order.”

Law Reviews. Attorneys’ Liability for Errors of Judgment — At the Crossroads (Ronald E. Mallen and David W. Evans), 48 Tenn. L. Rev. 283.

Balancing the Budget on the Backs of America’s Elderly — Section 4734 of the Balanced Budget Act: Criminalization of the Attorney’s Role as Advisor and Counselor, 29 U. Mem. L. Rev. 165 (1998).

Resisting the Current, 52 Vand. L. Rev. 1015(1999).

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

Speaking Truth to Powerlessness, 52 Vand. L. Rev. 995 (1999).

The Lawyer’s Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Everything You Tell Me Will Remain Confidential (Maybe): The Client’s Right to Know About Tennessee’s Confidentiality Disclosure Exceptions, 48 U. Mem. L. Rev. 583 (2017).

Disciplinary Board Opinions. An appellate brief prepared and filed by an attorney and a trial transcript furnished to an attorney are property of the client. Formal Ethics Opinion 83-F-42 (4/14/83).

Client’s funds in interest-bearing accounts. Formal Ethics Opinion 84-F-68 (5/29/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Settlement of a case and handling of settlement proceeds when attorney is unable to communicate with a client. Formal Ethics Opinion 85-F-90 (3/13/85).

Lawyers of Tennessee may not give the interest derived from a trust account to a charity designated by the lawyer. Formal Ethics Opinion 85-F-97 (8/22/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney’s client. Formal Ethics Opinion 85-F-100 (9/30/85).

Lawyer’s ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

The mechanics of trust accounting. Formal Ethics Opinion 89-F-121 (9/9/89).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

NOTES TO DECISIONS

ANALYSIS

1. Suspension Proper.
2. Disbarment.
3. No Violation.
4. Violation.
5. Fees.

1. Suspension Proper.

Forty-five-day suspension of a lawyer’s license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer’s attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

Suspension was supported by the record because the attorney not only knowingly failed to communicate with clients regarding her rapidly accruing fees, she also brazenly refused to comply with her duty to surrender to the clients items such as the brain tissue slides from their daughter’s autopsy; when the clients sued the attorney to regain the items, the attorney responded by threatening them with legal action and even criminal prosecution. *Sallee v. Tenn.*

Bd. of Prof’l Responsibility, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Record contained ample evidence of injury or potential injury, as the attorney’s conduct in all three cases caused potential injury to his clients; the attorney admitted receiving multiple orders requesting status updates and establishing filing deadlines, he ignored each order, and his actions caused both injury and potential injury to the legal system, and the 30 days’ active suspension reflected the consideration of the attorney’s mitigating circumstances and was not an abuse of discretion. *Walwyn v. Bd. of Prof’l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

Suspension, not a reprimand as imposed by the hearing panel, was the appropriate sanction for the attorney’s failure to file a delayed notice of appeal for three and a half years, particularly given the attorney’s prior disciplinary history, including multiple offenses, the vulnerability of the victim, and the attorney’s substantial experience in the practice of law. *In re Walwyn*, 531 S.W.3d 131, 2017 Tenn. LEXIS 457 (Tenn. Aug. 4, 2017).

Debtors’ attorney violated a number of the

Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a suspension from practice before the court was appropriate. *In re Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

2. Disbarment.

Hearing panel's decision to impose disbarment for an attorney's violation of Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3, 1.4(a) and (b), 3.2, and 8.4(a), and (d) was not arbitrary, capricious, or characterized by an abuse of discretion because on multiple occasions the attorney knowingly failed to perform services for his clients and violated his professional duties, which caused serious or potentially serious injuries to his clients and the legal system; the panel properly found multiple aggravating factors warranting disbarment, including the attorney's substantial experience practicing law, his commission of multiple offenses in violation of numerous disciplinary rules, his pattern of misconduct, his failure to acknowledge wrongdoing, and his incompetence. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Disbarment of an attorney was appropriate because the attorney: (1) did not provide competent representation to the attorney's clients; (2) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; and (3) failed to keep the attorney's clients informed about their cases. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

3. No Violation.

Finding that an attorney violated Tenn. Sup. Ct. R. 8, RPC 1.4(a) and (b) as it related to the attorney's representation of one client was set aside as the attorney offered un rebutted testimony regarding language difficulties he had in communicating with the client as well as his own diligent maintenance of oral communication and consultation with the client through the client's own interpreter. Disciplinary counsel failed to address what constituted reasonable communication with non-English speaking clients from cultures without written languages or non-literate clients. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

4. Violation.

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.15(a), 1.16, 8.4, and 1.4(a) was supported by substantial and material evidence because the attorney and his client gave conflicting testimony on whether the written fee agreement was subsequently modified by an oral agreement that permitted the attorney to treat \$7,500 as an earned fee and the hearing panel credited the client's version of events. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

Material and substantial evidence supported the determination that an attorney violated the rule because the attorney did not tell her clients that her original estimate for the entire wrongful death action had proven inaccurate, and the fee the attorney sought to charge the clients was not reasonable in light of the minimal results accomplished at the time of her termination; the clients had no way to know the enormous number of total hours the attorney was claiming to have worked. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Hearing panel's finding that an attorney violated Tenn. Sup. Ct. R. 8, DR 1.3 and 1.4, was supported by substantial evidence where it showed that he went to trial on one matter without adequately informing the client of the issues he planned to address and failed to adequately explain how that matter had nothing to do with a collection matter against a plumbing company. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. 8, DR 1.4 and 8.4(a) in handling another client's case was supported by substantial evidence where the unrefuted proof showed he failed to inform the client about how a default judgment was set aside, and there was no proof that the client had obtained the default judgment fraudulently. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

5. Fees.

Tennessee Rules of Professional Conduct governing lawyers require transparency and candor with clients, and if the lawyer has sufficient experience, such an estimate can be given; however, under most circumstances, once it becomes reasonably clear to the lawyer that the estimate is inaccurate, this fact should be communicated to the client, so the client can make an informed decision about going forward with the case. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

There was sufficient evidence to support the findings of the Board of Professional Responsibility Hearing Panel that an attorney violated the rule because there was proof that she failed to respond to a client's requests for information

about an accounting and refund of the fee he paid. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Rule 1.5. Fees. — (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or the award of custodial rights, or upon the amount of alimony or support, or the value of a property division or settlement, unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital

estate and the fee arrangement is disclosed to the court; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

(f) A fee that is nonrefundable in whole or in part shall be agreed to in a writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.

Comment.

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (10) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. With respect to whether a writing is required when a lawyer seeks to change the terms of a fee agreement with a client, see RPC 1.8, Comment [1].

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations

on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See RPC 1.16(d). The obligation to return any portion of a fee does not apply, however, if the lawyer charges a reasonable nonrefundable fee.

[4a] A nonrefundable fee is one that is paid in advance and earned by the lawyer when paid. Nonrefundable fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular nonrefundable fee is reasonable, or whether it is reasonable to charge a nonrefundable fee at all, a lawyer must consider the factors that are relevant to the circumstances. Recognized examples of appropriate nonrefundable fees include a nonrefundable retainer paid to compensate the lawyer for being available to represent the client in one or more matters or where the client agrees to pay to the lawyer at the outset of the representation a reasonable fixed fee for the representation. Such fees are earned fees so long as the lawyer remains available to provide the services called for by the retainer or for which the fixed fee was charged. RPC 1.5(f) requires a writing signed by the client to make certain that lawyers take special care to assure that clients understand the implications of agreeing to pay a nonrefundable fee.

[4b] A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to RPC 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of RPC 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should discuss with the client alternative bases for the fee and explain their implications.

Prohibited Contingent Fees

[5a] In some circumstances, applicable law may impose limitations on contingent fees, such as a ceiling on the percentage. For example, Tennessee law regulates contingent fees in medical malpractice cases. *See* Tenn. Code Ann. § 29-26-120. In these circumstances, charging unlawful fees or expenses may be considered unreasonable under paragraph (a) of this Rule and may violate RPC 8.4 or other rules. *See* RPC 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or an award of custody or upon the amount of alimony or support or property settlement to be obtained. This provision permits a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders provided that the fee arrangement is disclosed to the court.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, and the agreement must be confirmed in writing. It does not require disclosure to the client of the share that each lawyer is to receive. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint

responsibility for the representation entails the obligations stated in RPC 5.1 for purposes of the matter involved. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. *See* RPC 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Firm" *See* RPC 1.0(c)

"Reasonable" *See* RPC 1.0(h)

"Writing" *See* RPC 1.0(n)

Law Reviews. 19th Annual Institute for Law and Economic Policy Conference: The Economics of Aggregate Litigation: How Much Is That Lawsuit in the Window? Pricing Legal Claims, 66 Vand. L. Rev. 1889 (2013).

19th Annual Institute for Law and Economic Policy Conference: The Economics of Aggregate Litigation: Setting Attorneys' Fees in Securities Class Actions: An Empirical Assessment, 66 Vand. L. Rev. 1677 (2013).

Attorneys' Fees — Appellate Review of Trial Courts' Determination of Reasonable Attorneys' Fees — Federal Lodestar Method Rejected, 17 Mem. St. U.L. Rev. 163 (1986).

Attorneys' Fees—Tennessee Recognizes the "Third Party Exception" to the American Rule, 16 Mem. St. U.L. Rev. 399 (1986).

Bankruptcy, Just for the Rich? An Analysis of Popular Fee Arrangements for Pre-Petition Legal Fees and a Call to Amend, 54 Vand. L. Rev. 1665 (2001).

Civil Rights Attorney's Fees: Hensley's Path to Confusion, 39 Vand. L. Rev. 359 (1986).

Determining a Reasonable Percentage in Establishing a Contingency Fee: A New Tool to Remedy an Old Problem (Jeffrey D. Swett), 77 Tenn. L. Rev. 653 (2010).

Family Law — Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorneys' Fees in Domestic Relation Cases, 26 U. Mem. L. Rev. 1575 (1996).

Legal Ethics & Legal Fees (John J. Thoma-son), 34 No. 4 Tenn. B.J. 33 (1998).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Ripple Effect: Huge salary hikes for associates are making their way to Tennessee (David A. Fox), 36 No. 7 Tenn. B.J. 1 (2000).

The Litigation Budget, 68 Vand. L. Rev. 855 (2015).

Disciplinary Board Opinions. Plaintiff's attorney accepting an offer of settlement from a defendant's insurance career. Formal Ethics Opinion 80-F-1 (9/5/80); Formal Ethics Opinion 80-F-1 Supp (4/16/81).

An intrastate affiliation between two law firms may not share a fee unless each firm has performed legal services to a client. Formal Ethics Opinion 81-F-8 (6/9/81).

An attorney not competent to handle criminal cases shall not accept representation in a criminal case. Formal Ethics Opinion 81-F-24 (12/31/81).

An attorney accepting employment in a domestic relations matter on a contingent fee basis does not warrant disciplinary sanctions. Formal Ethics Opinion 82-F-26 (2/22/82).

The propriety of an attorney charging interest on accounts more than thirty days delinquent. Formal Ethics Opinion 82-F-28 (6/18/82).

It is improper for an attorney to remit excess funds accumulated from interest on attorney's fees to clients. Formal Ethics Opinion 82-F-30 (6/18/82).

Fees: credit card plan payment. Formal Ethics Opinion 82-F-28(a) (10/18/82).

The propriety of employing a suspended attorney in a non-legal capacity and the propriety of dividing an attorney's fee with a suspended

attorney. Formal Ethics Opinion 83-F-50 (8/12/83).

An attorney is required to take his entire fee out of the "front-end money"; or, to structure the receipt of his fee computed on the present day value of the entire settlement. Formal Ethics Opinion 84-F-61 (11/18/83).

Publication of fees for the performance of routine legal services is permissible. Formal Ethics Opinion 84-F-63 (1/18/84).

FDIC salaried staff attorney is prohibited from requesting reimbursement from third party debtors, pursuant to the terms of a promissory note, for legal services expended in the collection of the notes owned and held by FDIC. Formal Ethics Opinion 84-F-67 (3/13/84).

Guidelines to divide a settlement fee between attorney and client. Formal Ethics Opinion 84-F-77 (10/17/84).

Structured settlements. Formal Ethics Opinion 85-F-96 (5/31/85).

The ethical consequences of settlement negotiations which include provisions relating to attorney's fees. Formal Ethics Opinions 85-F-96 (a) (9/26/86).

The attorney's retention of clients' documents in an effort to enforce resolution of a fee dispute between the attorney and client. Formal Ethics Opinion 86-F-106 (9/26/86).

In all cases in which an award of reasonable attorney's fees to the state is appropriate, it is ethical for the attorney general to request and receive attorney's fees based on prevailing market rates, unrelated to a cost-based standard. Formal Ethics Opinion 91-F-125 (3/18/91).

The ethical/fiduciary responsibilities relating to retainer fees, advanced fees, advanced costs and expenses, flat fees, pre-paid fees, and non-refundable retainer fees. Formal Ethics Opinion 92-F-128 (1992).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

NOTES TO DECISIONS

ANALYSIS

1. Award of Fees Reasonable.
2. Suspension Proper.
3. Disbarment Proper.
4. Domestic Relations Cases.
5. Fee Contract.
6. Quantum Meruit.
7. Attorney Representing Minor.
8. No Violation.
9. Violation.
10. Communication.
11. Review.
12. Fee Splitting.
13. Award of Fees Unreasonable.

1. Award of Fees Reasonable.

When consumers sought attorney's fees for their trial attorney in a consumer protection matter, the intermediate appellate court did not err in raising the award of the trial-level fees from \$2000 to \$6500 because, while the fees requested were excessive, the facts preponderated against the award of only \$2000. *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 2006 Tenn. LEXIS 900 (Tenn. 2006).

Where buyers of a termite-infested home prevailed in a suit against sellers and a termite control company, trial court did not abuse discretion under Tenn. Sup. Ct. R. 8, § 1.5 in awarding attorney fees to buyers in the amount of \$25,000 pursuant to the contract for sale of

real estate; because the case involved a lengthy jury trial and the attendant substantial preparation was required, the fee awarded was reasonable. *Elchlepp v. Hatfield*, 294 S.W.3d 146, 2008 Tenn. App. LEXIS 437 (Tenn. Ct. App. July 30, 2008), appeal denied, — S.W.3d —, 2009 Tenn. LEXIS 83 (Tenn. Jan. 26, 2009).

Trial court did not abuse discretion in awarding attorney fees to the creditor in the amount of \$30,000; case involved a lengthy process of disposition of collateral, negotiation for settlement, and bench trial, and the fee awarded was reasonable under the circumstances presented. *Brunswick Acceptance Co., LLC v. MEJ, LLC*, 292 S.W.3d 638, 2008 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 21, 2008).

Finding that the decedent's mother was obligated to pay a reasonable attorney fee to an attorney, which was one-third of the settlement proceeds, was appropriate because the settlement proceeds constituted a common fund and the mother was a passive beneficiary of that fund. Further, when considering the proof that was submitted in support of the attorney's claim that a one-third fee was appropriate under former Tenn. Sup. Ct. R. 8, DR 2-106(B) for the mother to pay, the appellate court was unable to conclude that the trial court's ultimate decision was unreasonable; at the very least, reasonable minds could have differed and the issue was not whether the appellate court agreed with the trial court's ultimate conclusion, but whether the trial court abused its discretion, which it did not. *Shamblin v. Sylvester*, 304 S.W.3d 320, 2009 Tenn. App. LEXIS 134 (Tenn. Ct. App. Apr. 13, 2009), appeal denied, — S.W.3d —, 2009 Tenn. LEXIS 757 (Tenn. Nov. 23, 2009).

In a case in which (1) an attorney was retained to enforce a creditor's judgment lien in a bankruptcy case, (2) the attorney required a non-refundable flat fee of \$1,000.00, and (3) all the attorney did was file proof of claim in bankruptcy court, the contract was not unconscionable, but under the circumstances of the case, the fee amount was unreasonable. *Whitton v. Hoover*, 313 S.W.3d 262, 2009 Tenn. App. LEXIS 772 (Tenn. Ct. App. Nov. 19, 2009).

Trial court did not err by ruling that the amount of attorney's fees paid by the purchaser of a note for the attorney of the holder of the note in a collection matter was reasonable as the case involved multiple parties, multiple documents including assumption and indemnification agreements, and numerous cross-claims and counterclaims. Although the attorney produced no time records or proof of regular hourly rate, the attorney testified as to approximate hours worked and the purchaser was able to negotiate a reduction in the contingency fee. *Raleigh Commons, Inc. v. SWH, LLC*, 580 S.W.3d 121, 2018 Tenn. App. LEXIS 729 (Tenn. Ct. App. Dec. 14, 2018).

Mother successfully enforced the existing child support order, and inasmuch as she was the prevailing party in the de novo hearing, the fact that she was also the prevailing party in the hearing before the magistrate did not affect the award of attorney fees for the de novo proceeding; the trial court found the amount of fees awarded to be properly calculated for services rendered from the month following the hearing before the magistrate. *State ex rel. Groesse v. Sumner*, 582 S.W.3d 241, 2019 Tenn. App. LEXIS 23 (Tenn. Ct. App. Jan. 18, 2019), appeal denied, *State ex rel. Groesse v. Sumner*, — S.W.3d —, 2019 Tenn. LEXIS 277 (Tenn. June 20, 2019).

Trial court properly awarded a county clerk attorney's fees and expenses in her action against the county seeking additional staff for her office because it made detailed findings as to each factor contained at subsection (a); the clerk's proposed line-item changes to the award, were they adopted, would constitute tweaking the trial court's decision, and the award was not disproportional to the relief obtained. *Armstrong v. Morrison*, — S.W.3d —, 2019 Tenn. App. LEXIS 540 (Tenn. Ct. App. Nov. 7, 2019).

Tenant failed to demonstrate that the trial court abused its discretion in awarding a commercial landlord fees and costs because the award of attorney's fees to the landlord as the prevailing party in the breach of contract action was reasonable. The landlord's attorney submitted a declaration, following the trial, that included copies of the invoices the attorney sent to the landlord detailing the activities the attorney performed, the amount of time the attorney spent on each activity, and the hourly rate the attorney charged. *Loans Yes v. Kroger Limited Partnership I*, — S.W.3d —, 2020 Tenn. App. LEXIS 486 (Tenn. Ct. App. Oct. 30, 2020).

Amount of attorney's fees awarded was reasonable and related to the petition to reduce or terminate alimony; the trial court's failure to list in its order the factors that guided its decision, standing alone, did not merit reversal, as the court was intimately familiar with the time and effort expended by the wife's attorneys, having presided over this litigation for over four years. *Gensci v. Wiser*, — S.W.3d —, 2021 Tenn. App. LEXIS 76 (Tenn. Ct. App. Mar. 01, 2021).

2. Suspension Proper.

Forty-five-day suspension of a lawyer's license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer's attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

Suspension was supported by the record because the attorney not only knowingly failed to communicate with clients regarding her rapidly accruing fees, she also brazenly refused to comply with her duty to surrender to the clients items such as the brain tissue slides from their daughter's autopsy; when the clients sued the attorney to regain the items, the attorney responded by threatening them with legal action and even criminal prosecution. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Debtors' attorney violated a number of the Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a suspension from practice before the court was appropriate. *In re Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

3. Disbarment Proper.

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; (3) failed to have written attorney fee agreements signed by clients; and (4) did not keep a client's funds separate from the attorney's operating funds. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers's misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

4. Domestic Relations Cases.

Attorneys may enter into contingent fee arrangements in domestic relations cases where

the payment or the amount of the fee is, in whole or in part, contingent on securing the divorce or on the amount of spousal support, child support, or marital property; however, since attorneys do not have an unrestricted right to enter into contingent fee arrangements, the courts retain their prerogative to satisfy themselves that contingent fees are reasonable. *Alexander v. Inman*, 903 S.W.2d 686, 1995 Tenn. App. LEXIS 70 (Tenn. Ct. App. 1995).

Wife was properly granted \$60,000 in attorney's fees where there was no proof in the record that the fees claimed were unreasonable. The trial court estimated that the husband's own attorney's fees exceeded \$300,000, and it was apparent that the time, labor, difficulty of the issues, and the results obtained all weighed in favor of the reasonableness of the claimed fee; furthermore, the wife unable to pay her attorney's fees, given that she was the sole caretaker of the parties' child, received only \$1,512 per month in support, she received no alimony, and received no major assets in the divorce. *Chaffin v. Ellis*, 211 S.W.3d 264, 2006 Tenn. App. LEXIS 200 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 867 (Tenn. 2006).

Wife's attorney's fees award was vacated because the court (1) did not consider statutory factors, (2) did not find reasonableness, and (3) did not refer to the applicable Rule of Professional Conduct or any of the Rule's factors. *Ellis v. Ellis*, — S.W.3d —, 2019 Tenn. App. LEXIS 61 (Tenn. Ct. App. Jan. 31, 2019).

5. Fee Contract.

Court did not err in finding that the parties had entered into a fee agreement as asserted by the estate's attorney, enforcing the fee agreement against the estate administrators, and in entering judgment in favor of the attorney for 3% of estate's assets and the reasonableness of the percentage was corroborated by the attorney's expert witness and credited by the court and by the probate court guidelines. *Cooper v. Estate of Weisberger*, 224 S.W.3d 154, 2006 Tenn. App. LEXIS 744 (Tenn. Ct. App. 2006), appeal denied, *Cooper v. Estate of Weisberger* (In re Estate of Weisberger), — S.W.3d —, 2007 Tenn. LEXIS 423 (Tenn. Apr. 16, 2007).

Because a fee agreement provided that once the full amount of the retainer had been used for legal services, an additional retainer would be required, depending on the status of the case, the possibility that the amount the client paid the attorney was a "fixed fee" earned by the attorney upon receipt was clearly precluded. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

There was substantial and material evidence to support the Board of Professional Responsibility Hearing Panel's finding that an attorney

violated the rule because the fee agreement was in writing and signed by the client, but it failed to adequately explain that it was nonrefundable. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

6. Quantum Meruit.

Award of \$350,000 to the attorney's estate in an action involving attorney fees was appropriate because, on remand, the trial court had correctly determined the quantum meruit value of the attorney's services to the client. *In re Estate of Fetterman v. King*, 206 S.W.3d 436, 2006 Tenn. App. LEXIS 319 (Tenn. Ct. App. 2006), appeal denied, *In re Estate of Fetterman*, — S.W.3d —, 2006 Tenn. LEXIS 878 (Tenn. Sept. 25, 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 915 (Tenn. Oct. 2, 2006).

7. Attorney Representing Minor.

Contingency fee agreement executed by an adult serving as next friend for a minor plaintiff does not bind the minor to a contract with counsel for the amount of the attorney's fee. To determine a reasonable fee for an attorney representing a minor, courts should analyze the ten factors set forth in Tenn. Sup. Ct. R. 8, RPC 1.5(a). Additionally, courts should be mindful of their particular responsibility to protect the minor's best interests. *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 2011 Tenn. LEXIS 308 (Tenn. Mar. 29, 2011).

8. No Violation.

Hearing panel erred in finding that an attorney violated Tenn. Sup. Ct. R. 8, RPC 1.5(a) by charging an unreasonable fee with regard to filings with a federal court as the record was deficient with regard to what fees the attorney actually charged in these cases, and disciplinary counsel failed to address the attorney's argument that disciplinary counsel should have presented evidence regarding the reasonable fees for these services. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

9. Violation.

Hearing panel of the Tennessee Board of Professional Responsibility did not err in considering the many hours an attorney sought to charge clients for watching television shows because the attorney could not equate that to research for which she could charge the clients. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Material and substantial evidence supported the determination that an attorney violated the rule because the attorney did not tell her clients that her original estimate for the entire wrongful death action had proven inaccurate, and the fee the attorney sought to charge the clients was not reasonable in light of the minimal

results accomplished at the time of her termination; the clients had no way to know the enormous number of total hours the attorney was claiming to have worked. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Record supported the hearing panel's conclusion that the attorney violated Tenn. Sup. Ct. R. 8, DR 1.5(a), (c) and 1.8(i), because the fee agreement, providing for payment of a contingent fee on the basis of an offer that the attorney recommended the client accept regardless of whether the client obtained any recovery, was clearly a ploy to pressure the client to accept a settlement offer if advised to do so by the attorney and thus was unreasonable. *Moore v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 576 S.W.3d 341, 2019 Tenn. LEXIS 207 (Tenn. May 13, 2019).

Ample substantial and material evidence supported the Board of Professional Responsibility Hearing Panel's findings that a lawyer had violated the Rules of Professional Conduct because the lawyer claimed a paralegal's work as his own; an itemization of fees and costs included entries purporting to describe the lawyer's work on a case that were either identical or nearly identical to entries on the paralegal's invoices that described his work on the case *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

10. Communication.

Tennessee Rules of Professional Conduct governing lawyers require transparency and candor with clients, and if the lawyer has sufficient experience, such an estimate can be given; however, under most circumstances, once it becomes reasonably clear to the lawyer that the estimate is inaccurate, this fact should be communicated to the client, so the client can make an informed decision about going forward with the case. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

11. Review.

Although not included in the trial court's written order, the trial court's oral ruling indicated that it did not rule on the factor under Tenn. Sup. Ct. R. Prof. Conduct 8, 1.5(a)(6) because neither party put on proof about the relationship between the parties, and the court could not ignore this oral statement to conclude that the trial court improperly failed to consider this factor. *Smith v. All Nations Church of God*, — S.W.3d —, 2020 Tenn. App. LEXIS 535 (Tenn. Ct. App. Nov. 25, 2020).

There was no dispute that under the statute, appellant was entitled to reasonable attorney fees incurred in prosecuting her action, but even assuming the trial court was permitted to

determine the appropriate hourly rate in the locality in the absence of proof, the trial court failed to do so in a way that afforded meaningful appellate review; the trial court did not discuss the experience of counsel and did not say what it believed to be the proper market rate, and remand was required. *Smith v. All Nations Church of God*, — S.W.3d —, 2020 Tenn. App. LEXIS 535 (Tenn. Ct. App. Nov. 25, 2020).

Trial court did not err in making no express findings as to Tenn. Sup. Ct. R. Prof. Conduct 8, 1.5(a)(2), (5), given the dearth of proof presented on these factors and the fact that the proof did not support appellant's arguments; this was not a case where counsel was required to drop everything else and immediately become involved in this case, a typical contingency fee case, and this was also not a case in which counsel chose to represent an unpopular client and thereby forewent opportunities to attract other clients. *Smith v. All Nations Church of God*, — S.W.3d —, 2020 Tenn. App. LEXIS 535 (Tenn. Ct. App. Nov. 25, 2020).

12. Fee Splitting.

Although the clients' former attorney and another attorney failed to obtain the clients' written consent to a fee-sharing arrangement, this transgression was not of a most flagrant sort, it did not go directly to the heart of the fiduciary relationship that existed between at-

torney and client, and the former attorney's failure to obtain the clients' written consent did not prejudice the clients. Accordingly, the former attorney was not precluded from recovering a reasonable fee as set forth in the fee agreement. *Cordova ex rel. Alfredo C. v. Nashville Ready Mix, Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 225 (Tenn. Ct. App. May 19, 2020).

13. Award of Fees Unreasonable.

Contract between clients and their former attorney, whom the clients discharged before entering a settlement with representation from another attorney, expressly provided that the attorney's fee was to be a reasonable fee. Accordingly, on remand, the trial court was to award a reasonable fee that was based on the relevant facts and factors because the only factor considered was the results obtained. *Cordova ex rel. Alfredo C. v. Nashville Ready Mix, Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 225 (Tenn. Ct. App. May 19, 2020).

Trial court did not abuse its discretion in excluding duplicate fees; the court concluded that duplicate time entries for two attorneys to perform the same work on the motion to dismiss were to be excluded because they were unnecessary and unreasonable in light of the single, narrow legal issue presented and the relative dollar amount at issue on the dismissed breach of contract claim. *Donovan v. Hastings*, — S.W.3d —, 2020 Tenn. App. LEXIS 483 (Tenn. Ct. App. Oct. 30, 2020).

Rule 1.6. Confidentiality of Information. — (a) A lawyer shall not reveal information relating to the representation of a client unless:

- (1) the client gives informed consent;
- (2) the disclosure is impliedly authorized in order to carry out the representation; or
- (3) the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client or another person from committing a crime, including a crime that is reasonably certain to result in substantial injury to the financial interest or property of another, unless disclosure is prohibited or restricted by RPC 3.3;

(2) to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services, unless disclosure is prohibited or restricted by RPC 3.3;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a fraud in furtherance of which the client has used the lawyer's services, unless disclosure is prohibited or restricted by RPC 3.3;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to comply with an order of a tribunal requiring disclosure, but only if ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected against disclosure by the attorney-client privilege or other applicable law; or

(3) to comply with RPC 3.3, 4.1, or other law.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See RPC 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, RPC 1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and RPCs 1.8(b) and 1.9(c) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See RPC 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality

is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See *also* Scope.

[3a] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

[3b] Information made confidential by this Rule does not include what a lawyer learns about the law, legal institutions such as courts and administrative agencies, and similar public matters in the course of representing clients. For example, during legal research of an issue while representing a client, a lawyer may discover a particularly important precedent, devise a novel legal approach, or learn the preferable way to frame an argument before a

particular judge that is useful both in the immediate matter and in other representation. Such information is part of the general fund of information available to the lawyer.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A disclosure of information in a way that cannot reasonably be linked to the client does not reveal information relating to the representation of a client in violation of this Rule. For example, a lawyer's use of hypotheticals to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

[4a] Unless there is a reasonable likelihood of adverse effect to the client, this Rule does not prohibit a lawyer from disclosing information relating to representation of a client for purposes of providing professional assistance to other lawyers, whether informally, as in educational conversations among lawyers, or more formally, as in continuing-legal-education lectures. Thus, a lawyer may generally confer with another lawyer (whether or not in the same firm) concerning an issue in which the disclosing lawyer has gained experience through representing a client in order to assist the other lawyer in representing that lawyer's own clients.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. For example, paragraph (b)(1) permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime.

[7] Paragraph (b)(2) is another limited exception to the rule of confidentiality that permits disclosure to the extent necessary to pre-

vent the client from perpetrating a fraud, as defined in RPC 1.0(d), but only if the fraud is reasonably certain to result in substantial injury to the financial or property interests of another and the client has used or is using the lawyer's services in furtherance of the fraud. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraphs (b)(1) and (b)(2) do not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. *See* RPC 1.2(d). *See* RPC 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and RPC 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances. In addition, where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization's constituents. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in RPC 1.13(b). RPC 3.3, rather than paragraphs (b)(1) and (b)(2) of this Rule, governs disclosure of a client's intention to commit perjury or other crimes in connection with an adjudicative proceeding.

[8] Paragraph (b)(3) addresses the situation in which a crime in furtherance of which a client has used a lawyer's services has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. For the protection of the client, such disclosures may be made only if they will be protected by the attorney-client privilege.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim brought by the lawyer involving the conduct or representation of a former client, such as when in-house counsel brings suit to redress his or her discharge from an organizational employer in retaliation for abiding by, or refusing to violate, a clear expression of public policy in the Rules of Professional Conduct. *See also* RPC 1.16, Comment [4]. Such a charge can arise in a civil, criminal, disciplinary, or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in a proceeding to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes RPC 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by RPC 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (c)(3) requires the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(6) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. *See* RPC 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited informa-

tion, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(6) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(6) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(6). Paragraph (b)(6) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, *see* Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a proceeding of a tribunal, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[16] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the pur-

poses specified in paragraphs (b)(1) through (b)(5). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and any other factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). *See, e.g.*, RPCs 8.1 and 8.3. RPC 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. *See* RPC 3.3(h) and (i). Also, in some circumstances, RPCs 4.1(b) and (c) require disclosure of the lawyer's withdrawal from the representation of a client and disaffirmation of written materials prepared for the client.

Disclosure Otherwise Required or Authorized

[17a] Paragraph (c)(1) recognizes the overriding value of life and physical integrity and requires disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Substantial bodily harm includes life-threatening and debilitating illnesses and the consequences of child sexual abuse. Such harm is reasonably certain to occur if such injuries will be suffered imminently or if there is a present and substantial threat that a person will suffer such injuries at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply must reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[17b] A lawyer might be called as a witness to give testimony concerning a client or might be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by RPC 1.4. Unless review is sought, however, paragraph (c)(2) permits the lawyer to comply with the court's order.

Acting Competently to Preserve Confidentiality

[18] Paragraph (d) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. *See* RPCs 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (d) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (*e.g.*, by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, *see* RPC 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and fed-

eral laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. *See* RPC 1.9(c). *See* RPC 1.9(c) for the prohibition against using such information to the disadvantage of the former client.

Definitional Cross-References

“Fraud” *See* RPC 1.0(d)

“Informed consent” *See* RPC 1.0(e)

“Reasonably” *See* RPC 1.0(h)

“Reasonably Believes” *See* RPC 1.0(i)

“Substantial” *See* RPC 1.0(l)

“Tribunal” *See* RPC 1.0(m)

Attorney General Opinions. In general, a district attorney turning over information to defense counsel pursuant to a mandate from the court will not be liable for the disclosure of confidential or privileged information. OAG 18-01, 2018 Tenn. AG LEXIS 1 (1/4/2018).

Compiler’s Notes. In its order filed March 6, 2017, the Supreme Court provided: “On July 11, 2016, the Tennessee Bar Association (“TBA”) filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association’s Model Rules of Professional Conduct that were adopted by the ABA’s House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8.”

“On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility (“BPR”) and the Knoxville Bar Association (“KBA”). The KBA’s written comments stated it approved of the TBA’s petition and the amendments proposed therein. The BPR’s written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR’s comments, noting whether it agreed with each of the BPR’s written comments. The Court thanks the TBA, BPR, and KBA for their input.

“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Attorney Liability: Is This The New Twilight?, 27 U. Mem. L. Rev. 13 (1996).

Client Perjury in Tennessee: A Misguided Ethics Opinion, An Amended Rule, And A Call

for Further Action by The Tennessee Supreme Court (Ernest F. Lidge), 63 Tenn. L. Rev. 1 (1995).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennan), 25 No. 3 Tenn. B.J. 24 (1989).

“Equal Justice Under Law” Doesn’t Mean Only You Can Afford It (Frank F. Drowata III), 41 No. 2 Tenn. B.J. 26 (2005).

Ethical Issues Facing Lawyer-Spouses and Their Employers, 35 Vand. L. Rev. 1435.

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

Hearing Stories Already Told: Successfully Incorporating Third Party Professionals into the Attorney — Client Relationship, 80 Tenn. L. Rev. 1 (2012).

Lawyers: A Call to Duty (Thomas P. Anderson), 17 Mem. St. U.L. Rev. 33 (1986).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

Remedies other than the Tennessee Uniform Administrative Procedures Act “Contested Case” Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

The Business and Ethics of Liability Insurers’ Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Ethical and Professional Responsibilities of the Lawyer for the Corporation in Responding to Fraudulent Conduct by Corporate Officers or Agents (Chief Justice E. Norman Veasey), 70 Tenn. L. Rev. 1 (2002).

The Lawyer’s Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

To Disclose or Not to Disclose, That Was the Question — Until Now: Tennessee’s New Rule of Professional Conduct 1.6 Mandates Disclosure of Confidential Client Information to Prevent Physical Injury or Death to Third Parties, 34 U. Mem. L. Rev. 941 (2004).

Everything You Tell Me Will Remain Confidential (Maybe): The Client’s Right to Know About Tennessee’s Confidentiality Disclosure Exceptions, 48 U. Mem. L. Rev. 583 (2017).

Disciplinary Board Opinions. If attorney practicing with a firm representing a plaintiff transfers to another firm engaged in defending the same lawsuit, the latter firm will be disqualified from further participation in the case. Formal Ethics Opinion 81-F-5 (4/17/81).

An attorney representing a party to a transaction may not thereafter represent any other party in an action against his former client arising out of or closely related to the transaction. Formal Ethics Opinion 81-F-9 (6/25/81).

An attorney shall resist disclosing confidential information relating to clients. Formal Ethics Opinion 81-F-20 (9/3/81).

A legal services law office shall not give information about a client to an agency funding the law office. Formal Ethics Opinion 82-F-25 (2/22/82).

Where both husband and wife are lawyers not practicing in association with one another, they or their firms may represent differing interests. Formal Ethics Opinion 82-F-31 (6/18/82).

An attorney may give information provided by clients to accountants and/or computer tax services retained by the attorney to assist in the preparation of clients' tax returns. Formal Ethics Opinion 82-F-35 (10/18/82).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

Prejudice to client by reporting ethics violation. Formal Ethics Opinion 84-F-69 (4/12/84).

The propriety of leasing law office space from a client in a building the client occupies and sharing the use of a common reception room and receptionist/typist with the client. Formal Ethics Opinion 84-F-70 (4/12/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

There is no impropriety in a law firm leasing non-lawyer staff personnel from a third party lessor/employer. Formal Ethics Opinion 85-F-99 (9/12/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

The vicarious disqualification of the entire staff of a district attorney general when one member of the staff is disqualified from handling a particular matter. Formal Ethics Opinion 87-F-111 (9/16/87).

Responsibility of an attorney when his/her client has committed perjury. Formal Ethics Opinion 93-F-133 (12/10/93).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

Duty of attorney where client's insurer and attorney disagree as to specific aspects of attorney's representation. Formal Ethics Opinion 99-F-143(a) (9/10/99).

Guidance concerning ethical obligations of attorneys who receive confidential documents of adverse parties which were inadvertently sent or disclosed. Formal Ethics Opinion No. 2004-F-150 (9/17/04).

NOTES TO DECISIONS

ANALYSIS

1. Subject of Communications.
2. Facts Insufficient to Constitute Breach.
3. In-house Counsel Disclosure.
4. Suspension.
5. Disqualification.

1. Subject of Communications.

Tenn. Sup. Ct. R. 8, RPC 1.6(b) consists of three separate possibilities, which are delineated as grammatical clauses joined with the word "or," not the word "and"; for this rule to be applicable, it is necessary only to fall within any one of these possible scenarios, one of which is to respond to allegations in any proceeding concerning the lawyer's representation of the client. *Hartman v. Cunningham*, 217 S.W.3d 408, 2006 Tenn. App. LEXIS 709 (Tenn.

Ct. App. 2006), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 186 (Tenn. 2007).

Any reasonably prudent and competent lawyer in protection of his professional reputation would respond to allegations made in a proceeding that the lawyer had committed malpractice; under such circumstances, a belief that disclosure is necessary to respond to the allegations is reasonable. *Hartman v. Cunningham*, 217 S.W.3d 408, 2006 Tenn. App. LEXIS 709 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 186 (Tenn. 2007).

Affidavit that a former client claimed was unnecessarily prejudicial to him which stated that his previous attorney was the third of eight attorneys to represent the client during his divorce and that the client's adultery "went unabated" despite an attempt at reconciliation, did not constitute privileged communications

between the client and his attorney because they were statements of fact that were already public record prior to the filing of the attorney's affidavit. *Hartman v. Cunningham*, 217 S.W.3d 408, 2006 Tenn. App. LEXIS 709 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 186 (Tenn. 2007).

2. Facts Insufficient to Constitute Breach.

Nowhere within Tenn. Sup. Ct. R. 8, RPC 1.6(b) is there a requirement that the allegations of malpractice must be primary to the proceeding in which they are made; rather, Tenn. Sup. Ct. R. 8, RPC 1.6(b) provides that a lawyer may reveal information to respond to allegations in any proceeding concerning the lawyer's representation of the client. *Hartman v. Cunningham*, 217 S.W.3d 408, 2006 Tenn. App. LEXIS 709 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 186 (Tenn. 2007).

Trial court had not erred in granting summary judgment to an attorney who was accused by his client in another proceeding of committing malpractice because the attorney had filed the affidavit in response to that accusation; even if the affidavit had contained privileged information, the communication was permissible pursuant to Tenn. Sup. Ct. R. 8, RPC 1.6(b) because the attorney reasonably believed that disclosure was necessary to defend against the allegations and T.C.A. § 23-3-105 did not provide the client a private right of action. *Hartman v. Cunningham*, 217 S.W.3d 408, 2006 Tenn. App. LEXIS 709 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 186 (Tenn. 2007).

Child's claim that the guardian ad litem had improperly disclosed confidential information was properly dismissed where the appointment order expressly authorized disclosure of information to the court, and as a result, the guardian had not violated Tenn. Sup. Ct. R. 8, DR 1.6. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

Rule 1.7. Conflict of Interest: Current Clients. — (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

3. In-house Counsel Disclosure.

Tennessee supreme court expressly adopted a new provision in former Code of Professional Responsibility DR 4-101(C) to permit in-house counsel to reveal the confidences and secrets of a client when the lawyer reasonably believes that such information is necessary to establish a common-law retaliatory discharge claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; nevertheless, while in-house counsel could ethically disclose such information to the extent necessary to establish the claim, in-house counsel must make every effort practicable to avoid unnecessary disclosure of client confidences and secrets, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure. *Crews v. Buckman Labs. Int'l*, 78 S.W.3d 852, 2002 Tenn. LEXIS 252 (Tenn. 2002), rehearing denied, — S.W.3d —, 2002 Tenn. LEXIS 332 (Tenn. July 9, 2002).

4. Suspension.

Attorney was subject to a one year active suspension from the practice of law after the attorney knowingly disclosed confidential information to a judge causing injury to a client whose case was delayed, and after he had sexual relations with second client but did not fully disclose possible effect of conflict to second client before obtaining waiver of conflict. *In re Vogel*, 482 S.W.3d 520, 2016 Tenn. LEXIS 74 (Tenn. Feb. 4, 2016).

5. Disqualification.

When the decedent's survivors sought to disqualify an attorney from representing the survivors' former attorneys in the attorneys' efforts to recover attorneys' fees against the survivors, the survivors' concern that their former attorneys might reveal more information than was permitted was mere speculation, which the appellate court found was too slender a reed upon which to disqualify the attorney. *Cordova ex rel. Alfredo C. v. Nashville Ready Mix, Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 225 (Tenn. Ct. App. May 19, 2020).

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) A lawyer shall not represent more than one client in the same criminal case or juvenile delinquency proceeding, unless

(1) the lawyer demonstrates to the tribunal that good cause exists to believe that no conflict of interest prohibited under this Rule presently exists or is likely to exist; and

(2) each affected client gives informed consent.

Comment.

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see RPC 1.9. For conflicts of interest involving prospective clients, see RPC 1.18. For definitions of "confirmed in writing" and "informed consent," see RPC 1.0(b) and (e). When a lawyer is representing two or more clients in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them, then RPC 2.2 and not this Rule governs.

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. *See also* Comment to RPC 5.1. Ignorance

caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment [4] to RPC 1.3 and paragraph [18] of Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). *See* RPC 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. *See* RPC 1.9; *see also* Comments [5] and [29] to this RPC (1.7).

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. *See* RPC 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. *See* RPC 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other

matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adversity between clients, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are: what is the likelihood that a difference in interests will eventuate and, if it does, will it materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client?

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under RPC 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor, or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See RPC 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions with clients. *See also* RPC 1.10 (personal interest conflicts under RPC 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter, or in substantially related matters, are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer (e.g., as parent, child, sibling or spouse) ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. *See* RPC 1.10.

Sexual Relations Between Lawyer and Client

[12] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Because of this fiduciary duty to clients, combining a professional relationship with any intimate personal relationship may raise concerns about conflict of interest, impairment of the judgment of both lawyer and client, and preservation of attorney-client privilege. These concerns may be particularly acute when a lawyer has a sexual relationship with a client. Such a relationship may create a conflict of interest under paragraph (a)(2) or violate other disciplinary rules, and it generally is imprudent even in the absence of an actual violation of these Rules.

[12a] Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the

relationship between the lawyer and client unequal. A sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role and thereby violate the lawyer's basic obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict the extent to which communications will be protected by the attorney-client privilege, because communications are protected by privilege only when they are imparted in the context of the client-lawyer relationship. The client's own emotional involvement may make it impossible for the client to give informed consent to these risks.

[12b] Sexual relationships with the representative of an organizational client may not present the same questions of inherent inequality as the relationship with an individual client. Nonetheless, impairment of the lawyer's independent professional judgment and protection of the attorney-client privilege are still of concern, particularly if outside counsel has a sexual relationship with a representative of the organization who supervises, directs, or regularly consults with an outside lawyer concerning the organization's legal matters. An in-house employee in an intimate personal relationship with outside counsel may not be able to assess and waive any conflict of interest for the organization because of the employee's personal involvement, and another representative of the organization may be required to determine whether to give informed consent to a waiver. The lawyer should consider not only the disciplinary rules but also the organization's personnel policies regarding sexual relationships (for example, prohibiting such relationships between supervisors and subordinates).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. *See* RPC 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payor who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, obtaining informed consent, confirmed in writing, from the client.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such an agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if, in the circumstances, the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. *See* RPC 1.1 (competence) and RPC 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under RPC 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. *See* RPC 1.0(e) (definition of informed consent). The information required to be provided to the client from whom consent is sought depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information provided must include the implications of the common representation, in-

cluding possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. *See* Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

[19a] In the absence of other law to the contrary, a government official or entity, like any other client, may waive a conflict of interest under this Rule.

Informed Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. The required writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. *See* RPC 1.0(b); *see also* RPC 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. *See* RPC 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients and whether mate-

rial detriment to the other clients or the lawyer would result. *See also* RPC 1.9.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is also governed by paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation provided to the client of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. Nevertheless, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent to a future conflict is more likely to be effective, particularly if, *e.g.*, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of consentability. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in both civil and criminal cases.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different

case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending; whether the issue is substantive or procedural; the temporal relationship between the matters; the significance of the issue to the immediate and long-term interests of the clients involved; and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then, absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a) of this Rule. Thus, for example, with respect to RPC 1.7(a)(1), the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise, and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. *See* Comment [8].

[27] Members of a family may reasonably seek joint representation by a single lawyer in a matter affecting the family. For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate or trust administration, the identity of the client may be unclear under Tennessee law. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[27a] It is often appropriate for a lawyer to represent more than one member of the same

family in connection with their estate plans, more than one beneficiary with common interests in an estate or trust administration matter, or co-fiduciaries of an estate or trust. Multiple representation in such contexts often can result in more economical and better coordinated plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations. Multiple representations of these kinds are appropriate where the interests of the clients in cooperation and achieving common objectives predominate over any inconsistent interests and where the lawyer complies with Rule 1.7's requirements as to informed consent. A lawyer may not represent clients whose interests actually conflict to such a degree that the lawyer cannot adequately represent their individual interests. Such conflicts of interest are so serious that Rule 1.7 prohibits a lawyer from undertaking or continuing representation of multiple clients even with the informed consent of each of the clients. *See* RPC 1.7(b)(1). Unless the plan involves the formation, modification, or termination of a consensual relationship between clients and the lawyer acts as an intermediary in compliance with RPC 2.2, undertaking such a multiple representation will be governed by this rule. *See* RPC 2.2, Comment [4].

[28] When a lawyer represents a client in a partisan role, whether as an advocate, an advisor, or the author of a legal opinion to be rendered on behalf of the client for use by a third person, this Rule provides special protections for the client to assure that the lawyer's loyalty will not be diluted by interests of other clients, the lawyer, or third persons. This Rule, however, is not applicable to conflicts of interest affecting clients the lawyer undertakes to serve as an intermediary. If, for example, business persons or members of a family are seeking the lawyer's advice or assistance in a non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual relationship between them, such as the formation of a business or a purchase or sale of property, RPC 2.2 applies. Similarly, if the effectuation of an estate plan or other gratuitous transfer entails the formation, modification, or termination of a consensual legal relationship between clients, and the lawyer acts as an intermediary in connection with the transaction, RPC 2.2 applies. Otherwise, this Rule applies. Nor is this Rule applicable to conflicts of interest affecting parties who a lawyer undertakes to serve as a dispute resolution neutral. *See* RPC 2.4.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse

interests cannot be reconciled, the result can be additional cost, complication, or even litigation. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that common representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. *See* RPC 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients

and agree to keep that information confidential with the informed consent of both clients.

[32] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of RPC 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in RPC 1.16.

Organizational Clients

[33] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. *See* RPC 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[34] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Common Representation of Co-Defendants in Criminal or Juvenile Delinquency Proceedings

[35] The potential for conflict of interest in representing multiple defendants in a criminal case or in juvenile delinquency proceedings is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. However, where the lawyer chooses to undertake such a joint representation, paragraph (c) re-

quires that the lawyer demonstrate to the satisfaction of the tribunal that good cause exists to believe that no conflict of interest prohibited by paragraph (b) presently exists or is likely to exist in the future. This showing reflects the same standard currently required by Tennessee Rule of Criminal Procedure 44(c).

[36] However, to avoid the premature disclosure of defense tactics, strategy, or other information relating to the representation, defense counsel may request that the tribunal hold an ex parte hearing to determine the propriety of the joint representation. *See* RPC 3.3(a)(3) (setting forth a lawyer's duty of candor in an ex parte hearing); *see also* RPC 3.5(b) (permitting a lawyer to speak ex parte to a judge when permitted to do so by law). Once the tribunal is satisfied that no good cause exists to believe that a conflict of interest currently exists or is likely to exist, a rebuttable presumption arises throughout the proceedings that the joint representation comports with the requirements of this Rule. However, this presumption in no way relieves counsel of any duty imposed under these Rules should such an actual conflict of interest later arise.

[37] The question of whether any particular juvenile has the capacity to give informed consent is governed by other law. If, under that other law, a particular juvenile lacks such capacity, then paragraph (c) would not allow a lawyer's joint representation of that juvenile and any other juvenile in the same juvenile delinquency proceeding. In determining the propriety of a joint representation in a juvenile delinquency proceeding under paragraph (c)(1), the tribunal also should satisfy itself that the affected juveniles have the capacity to give, and have given, their informed consent under (c)(2).

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Informed consent" *See* RPC 1.0(e)

"Materially" *See* RPC 1.0(o)

"Reasonably believes" *See* RPC 1.0(i)

"Tribunal" *See* RPC 1.0(m)

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Burying the Hatchet: Do Tennessee's New Screening Rules Leave the Clinard Handle Sticking Out? (Sonda L. Gifford), 70 Tenn. L. Rev. 201 (2002).

Competency and Impeachment of Witnesses (Leo Bearman, Jr.), 57 Tenn. L. Rev. 89 (1989).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennen), 25 No. 3 Tenn. B.J. 24 (1989).

Dual Representation at the Grand Jury: A Conflict of Interest, 10 Mem. St. U.L. Rev. 525.

Ethical Issues Facing Lawyer-Spouses and Their Employers, 35 Vand. L. Rev. 1435.

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite

Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

Ethics 2000 and Conflicts of Interest: The More Things Change. (Charles W. Wolfram), 70 Tenn. L. Rev. 27 (2002).

Family Law — Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorneys' Fees in Domestic Relation Cases, 26 U. Mem. L. Rev. 1575 (1996).

How the New Ethics Rules Affect Estate Planners (Dan W. Holbrook), 39 No. 4 Tenn. B.J. 31 (2003).

Legal Ethics-Attorney Conflicts of Interest-The Effect of Screening Procedures and the Appearance of Impropriety Standard on the Vicarious Disqualification of a Law Firm (Luke W. Hunt), 70 Tenn. L. Rev. 251 (2002).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

Disciplinary Board Opinions. Plaintiff's attorney accepting an offer of settlement from a defendant's insurance career. Formal Ethics Opinion 80-F-1 (9/5/80); Formal Ethics Opinion 80-F-1 Supp (4/16/81).

Conflicts of interest while serving as agent for title insurance company. Formal Ethics Opinion 80-F-2 (10/28/80)

It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

An attorney shall not accept employment in a contemplated litigation if it is obvious that he ought to be called as a witness in a contested matter. Formal Ethics Opinion 81-F-10 (6/25/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

Conflict of interest of court appointed attorneys. Formal Ethics Opinion 81-F-12 (7/10/81); Formal Ethics Opinion 81-F-12(a) (8/12/81).

A firm engaging in the general practice of law, not on retainer to a city nor the municipal

attorney, may represent clients before various entities of a city and do trial work on a case-by-case basis for a city. Formal Ethics Opinion 81-F-13 (7/10/81).

An attorney may represent both parties in an irreconcilable differences divorce. Formal Ethics Opinion 81-F-16 (8/26/81).

Members of a firm serving as general counsel for the Tennessee Law Enforcement Officers Association are not disqualified from engaging in the practice of criminal law. Formal Ethics Opinion 81-F-18 (8/26/81).

It is improper for a partner in a law firm serving as a conservator to be represented in litigation by a member of the firm, if he or a lawyer in the firm will be called as a witness. Formal Ethics Opinion 81-F-19 (9/3/81).

It is improper for a city attorney to defend a person being prosecuted in criminal court by the city police department. Formal Ethics Opinion 81-F-23 (12/31/81).

Where both husband and wife are lawyers not practicing in association with one another, they or their firms may represent differing interests. Formal Ethics Opinion 82-F-31 (6/18/82).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

It is improper for a county attorney to counsel the county in preparation of the county budget and also represent the sheriff or deputy sheriffs to increase their budget or salaries. Formal Ethics Opinion 83-F-53 (8/12/83).

Existence of attorney-client relationship between a district attorney who provides child support enforcement services and the recipient of a public assistance grant. Formal Ethics Opinion 83-F-55 (8/24/83).

The propriety of representing a will beneficiary to uphold the validity of the will on the issue of testamentary capacity after having witnessed the execution of the will. Formal Ethics Opinion 83-F-54 (8/29/83).

Conflict of interest to represent a sheriff for alleged civil rights action and represent criminal defendants where sheriff is material witness. Formal Ethics Opinion 83-F-56 (9/22/83).

A partner or associate of the city attorney is prohibited from representing criminal defendants prosecuted by the city police department. Formal Ethics Opinion 83-F-57 (10/24/83).

Judge of the county juvenile court representing the county school board in an action against the county commission. Formal Ethics Opinion 83-F-58 (11/4/83).

An attorney is required to take his entire fee out of the "front-end money"; or, to structure

the receipt of his fee computed on the present day value of the entire settlement. Formal Ethics Opinion 84-F-61 (11/18/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is improper for an attorney to share his legal fees with the communal religious order to which he belongs. Formal Ethics Opinion 84-F-62 (1/18/84).

It is improper to represent insureds in a class action against an insurance company after previously representing such company. Formal Ethics Opinion 84-F-65 (1/18/84).

Confidentiality of statements by a client to his attorney and revealed to the district attorney and the court and the propriety of continuing to represent the client after the district attorney states an intention to call the attorney to testify. Formal Ethics Opinion 84-F-66 (1/31/84).

FDIC salaried staff attorney is prohibited from requesting reimbursement from third party debtors, pursuant to the terms of a promissory note, for legal services expended in the collection of the notes owned and held by FDIC. Formal Ethics Opinion 84-F-67 (3/13/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

An attorney arranging to assist a collection agency in collection of delinquent accounts in a manner where the creditor has no contact with the attorney. Formal Ethics Opinion 84-F-81 (10/17/84); Formal Ethics Opinion 85-F-81(a) (3/4/85).

It is improper for a county attorney to assist a county official in filing a pro se petition against the county executive and to assist the parties in preparing and executing an agreed pro se order granting salary increases to the deputy clerk. Formal Ethics Opinion 85-F-83 (1/2/85).

Conflict of interest to represent a criminal defendant upon appointment by the court and personally represent the county sheriff in a civil matter when deputy sheriff will testify against the indigent defendant. Formal Ethics Opinion 85-F-92 (5/6/85).

Structured settlements. Formal Ethics Opinion 85-F-96 (5/31/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

Propriety of an attorney recommending that a client contract with a lay person on a contingent fee basis. Formal Ethics Opinion 85-F-101 (12/16/85).

The ethical propriety of representation adverse to a former client. Formal Ethics Opinion 86-F-104 (8/4/86).

The ethical consequences of settlement negotiations which include provisions relating to attorney's fees. Formal Ethics Opinions 85-F-96(a) (9/26/86).

The propriety of an attorney who acted as a substitute trustee for a lender at a nonjudicial foreclosure sale, and having sold the property to the lender, now making an offer to purchase the property from the lender. Former Ethics Opinion 86-F-108 (9/26/86).

The propriety of representing litigants upon employment of a paralegal who had duties involving opposing parties while formerly employed by adverse counsel. Formal Ethics Opinion 87-F-110 (6/10/87).

The propriety of accepting employment by an insurer on behalf of an insured with conditions limiting or directing the scope and extent of pre-trial discovery. Formal Ethics Opinion 88-F-113.

An attorney may represent a client and the client's health insurance provider claiming a subrogation interest for medical bills of the client if it is obvious that the attorney can

adequately represent the interests of each and if each consents, preferably in writing, to the representation after full disclosure of the possible effect of such representation. Formal Opinion 95-F-136 (9/8/95).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

Propriety of defense attorneys retained by insurance companies to represent the insurance company's insureds and taking certain actions solely because the insurance company directs them to do so. Formal Ethics Opinion 2000-F-145 (9/08/00).

Guidance regarding what general types of claims or representations included within attorney advertising are false or misleading. Formal Ethics Opinion No. 2004-F-149 (9/17/04).

NOTES TO DECISIONS

ANALYSIS

1. Applicability.
2. Conflict of Interest.
3. Suspension.
4. No Conflict.

1. Applicability.

Trial court did not err in analyzing the conflict of interest involving the law firm and its attorneys under the rule for current clients; the law firm could not purge its concurrent conflict by withdrawing from its representation of one client in another case, and the court rejected appellants' argument that the issue should have been analyzed under the rule for former clients. *Howell v. Morisy*, — S.W.3d —, 2020 Tenn. App. LEXIS 526 (Tenn. Ct. App. Nov. 20, 2020).

2. Conflict of Interest.

Defendant's counsel was properly disqualified where an actual conflict of interest existed because counsel was also a part time assistant district attorney in the same county where the case was being prosecuted, counsel's dual roles

in the same county created an actual conflict of interest that the state could not be forced to waive, and the conflict of interest superseded defendant's right to the counsel of his choosing. *State v. White*, 114 S.W.3d 469, 2003 Tenn. LEXIS 828 (Tenn. 2003).

Defendant's counsel was properly disqualified where an actual conflict of interest existed because counsel was also a part time assistant district attorney in the same county where the case was being prosecuted, and even if defendant could have waived the conflict, as he claimed he wished to do, the state was not required to comply with such a waiver and could not be compelled to effectively relinquish its right to object to the conflict of interest. *State v. White*, 114 S.W.3d 469, 2003 Tenn. LEXIS 828 (Tenn. 2003).

Trial court did not abuse its discretion in refusing to disqualify the sheriff's attorney where it had not been shown that the interests of the sheriff in his official capacity were adverse to the interests of the sheriff in his individual capacity in the other cases. *Moody v. Hutchison*, 247 S.W.3d 187, 2007 Tenn. App. LEXIS 581 (Tenn. Ct. App. Sept. 17, 2007),

appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 144 (Tenn. Mar. 3, 2008).

Where none of the debtors objected to the fees, it would have been impetuous to find that the risk of conflict was substantial or that the lawyer's interest in attorney fees would have affected his representation of debtors in a material and adverse way, and a look at some of the supporting proof put at ease any notions of conflict of interest. Supporting proof included the following: (1) Debtors all testified to their awareness of the \$300 fee charged by the lawyer; (2) Debtors all expressed their desire to keep their current vehicles; (3) All debtors saved on their monthly payments, total costs on the loans, and lessened the amount of their overall secured loans; (4) Debtors were completely satisfied by the lawyer's representation; (5) They understood that they were borrowing additional funds to pay the attorney fees; and (6) Debtors all indicated they understood that the redemption lender was an independent entity not associated with the lawyer. *In re Ray*, 314 B.R. 643, 2004 Bankr. LEXIS 1370 (Bankr. M.D. Tenn. 2004).

Trial court erred when it conducted an evidentiary hearing with regard to an inmate's petition for post-conviction relief because it failed to address a possible conflict of interest issue involving retained counsel in violation of Tenn. Sup. Ct. R. 8, RPC 1.7, despite being aware of such potential conflict and it had a duty of inquiry. *Frazier v. State*, 303 S.W.3d 674, 2010 Tenn. LEXIS 88 (Tenn. Feb. 18, 2010).

Trial court properly affirmed the decision of a hearing panel of the Board of Professional Responsibility, which determined that an attorney had to be suspended, because the attorney's conduct of representing two clients with conflicting interests was egregious; the attorney continued to represent the clients, ignoring the orders of the chancery court and the court of appeals and the public censure. *Cody v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 471 S.W.3d 420, 2015 Tenn. LEXIS 584 (Tenn. July 27, 2015).

Law firm was not entitled to judgment on the pleadings in a legal malpractice action because, although the law firm alleged that a former client waived any conflict of interest in a signed engagement letter, the former client sufficiently alleged in the client's complaint that the law firm engaged to represent the client and continued that representation despite dealing simultaneously with the client's former employer

and third parties to the client's detriment. *Culpepper v. Baker*, — S.W.3d —, 2020 Tenn. App. LEXIS 460 (Tenn. Ct. App. Oct. 16, 2020).

Denial of postconviction relief was improper because there was evidence of an actual conflict of interest resulting in prejudice to the inmate and it was brought to the post-conviction court's attention that counsel felt there was a conflict due to his new position at the Public Defender's Office. Post-conviction counsel's discomfort at having to question trial counsel was evident and he did not meaningfully press him to admit any mistakes. *Brown v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 247 (Tenn. Crim. App. Apr. 15, 2020).

3. Suspension.

Attorney was subject to a one year active suspension from the practice of law after the attorney knowingly disclosed confidential information to a judge causing injury to a client whose case was delayed, and after he had sexual relations with second client but did not fully disclose possible effect of conflict to second client before obtaining waiver of conflict. *In re Vogel*, 482 S.W.3d 520, 2016 Tenn. LEXIS 74 (Tenn. Feb. 4, 2016).

4. No Conflict.

Defendant's petition for post-conviction relief was properly denied as there was no conflict of interest, and trial counsel was not deficient in failing to disclose his representation of the prosecutor's mother in a civil matter to defendant because counsel's representation of the prosecutor's mother was not directly adverse to his representation of defendant, and was unrelated to defendant's murder trial; and defendant did not show that counsel's representation of defendant would be materially limited. *Glenn v. State*, — S.W.3d —, 2018 Tenn. Crim. App. LEXIS 741 (Tenn. Crim. App. Oct. 1, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 64 (Tenn. Jan. 16, 2019).

Trial court abused its discretion in disqualifying the District Attorney General's Office in the eight cases at issue, as even if the appellate court assumed that first and second defendants were in fact victims in other cases because their property was stolen, the assistant district attorney general assigned to those cases did not have an actual conflict of interest because defendants, as victims, were not clients of the attorney general's office. *State v. Grooms*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 755 (Tenn. Crim. App. Nov. 25, 2020).

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules. — (a)

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client, unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client to the lawyer or a person related to the lawyer, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of the representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation or direction in connection with the representation of a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by RPC 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless:

(1) each client is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and

(2) each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client or prospective client for malpractice; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless the lawyer fully discloses all the terms of the agreement to the client in a manner that can reasonably be understood by the client and advises the client in writing of the desirability of seeking and gives the client a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) [Reserved]

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment.

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See RPC 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee or salary arrangements between client and lawyer, which are governed by RPC 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business, such as shares of stock, stock options, or an equivalent equity interest in an unincorporated business, or other nonmonetary property as payment, or security for payment, of all or part of a fee. It also applies when a lawyer seeks to renegotiate the terms of the fee agreement with the client after representation begins in order to reach a new agreement that is more advantageous to the lawyer than the original agreement. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, bank-

ing or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See RPC 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of RPC 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the

lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that RPC 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client, as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. *See* RPCs 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c). This Rule does not prohibit a lawyer from soliciting a gift or financial contribution from a client to a civic or charitable organization, so long as the lawyer or a person related to the lawyer does not

receive any personal benefit from the gift or contribution.

[7] If effectuation of a substantial gift requires preparing a legal instrument, such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in RPC 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to RPC 1.5 and paragraphs (a) and (i) of this Rule.

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a

third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. *See also* RPC 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with RPC 1.7. The lawyer must also conform to the requirements of RPC 1.6 concerning confidentiality. Under RPC 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under RPC 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under RPC 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under RPC 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, RPC 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must give each client a reasonable opportunity to seek the advice of independent counsel in the transaction and inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. *See also* RPC 1.0(e) (definition of informed

consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with RPC 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel. The lawyer must also fully disclose all the terms of the settlement in a manner that can reasonably be understood by the client.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is

subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. In Tennessee these may include liens granted by statute (*see* Tenn. Code Ann. §§ 23-2-102, 23-2-103, and 40-33-111), liens originating in common law or liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by RPC 1.5.

[17] [Intentionally omitted]

[18] [Intentionally omitted]

[19] [Intentionally omitted]

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client.

Definitional Cross-References

"Firm" *See* RPC 1.0(c)

"Informed consent" *See* RPC 1.0(e)

"Knowingly" and "Knows" *See* RPC 1.0(f)

"Reasonable" and "Reasonably" *See* RPC 1.0(h)

"Substantial" *See* RPC 1.0(l)

"Writing" *See* RPC 1.0(n)

Compiler's Notes. Supreme Court order dated May 4, 2021, effective immediately, provides as follows: "When the Tennessee Alliance for Legal Services, Legal Aid of East Tennessee, Legal Aid of Middle Tennessee and the Cumberlandands, Memphis Area Legal Aid Services, or West Tennessee Legal Services receives donations or other funding to provide humanitarian aid to persons in need, such as financial assistance to pay for food, clothing, shelter, or transportation, the organization's use of such donations or other funding to provide humanitarian aid to its clients or the clients' families shall not be deemed a violation of paragraph (e) of this Rule."

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Attorney Liability: Is This The New Twilight?, 27 U. Mem. L. Rev. 13 (1996).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles

W. Bone & Keith C. Dennon), 25 No. 3 Tenn. B.J. 24 (1989).

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

Ethics 2000 and Conflicts of Interest: The More Things Change. (Charles W. Wolfram), 70 Tenn. L. Rev. 27 (2002).

Ethical Issues Facing Lawyer-Spouses and Their Employers, 35 Vand. L. Rev. 1435.

Family Law — Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorneys' Fees in Domestic Relation Cases, 26 U. Mem. L. Rev. 1575 (1996).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

When Less Legal Service May Mean More Access to Justice (Carl A. Pierce), 41 No. 2 Tenn. B.J. 22 (2005).

Disciplinary Board Opinions. Plaintiff's attorney accepting an offer of settlement from a defendant's insurance career. Formal Ethics Opinion 80-F-1 (9/5/80); Formal Ethics Opinion 80-F-1 Supp (4/16/81).

An attorney shall not accept employment in a contemplated litigation if it is obvious that he ought to be called as a witness in a contested matter. Formal Ethics Opinion 81-F-10 (6/25/81).

It is improper for a partner in a law firm serving as a conservator to be represented in litigation by a member of the firm, if he or a lawyer in the firm will be called as a witness. Formal Ethics Opinion 81-F-19 (9/3/81).

Where both husband and wife are lawyers not practicing in association with one another, they or their firms may represent differing interests. Formal Ethics Opinion 82-F-31 (6/18/82).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

An attorney is required to take his entire fee out of the "front-end money"; or, to structure the receipt of his fee computed on the present

day value of the entire settlement. Formal Ethics Opinion 84-F-61 (11/18/83).

It is improper for an attorney to share his legal fees with the communal religious order to which he belongs. Formal Ethics Opinion 84-F-62 (1/18/84).

FDIC salaried staff attorney is prohibited from requesting reimbursement from third party debtors, pursuant to the terms of a promissory note, for legal services expended in the collection of the notes owned and held by FDIC. Formal Ethics Opinion 84-F-67 (3/13/84).

The propriety of leasing law office space from a client in a building the client occupies and sharing the use of a common reception room and receptionist/typist with the client. Formal Ethics Opinion 84-F-70 (4/12/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

Guidelines to divide a settlement fee between attorney and client. Formal Ethics Opinion 84-F-77 (10/17/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

An attorney arranging to assist a collection agency in collection of delinquent accounts in a manner where the creditor has no contact with the attorney. Formal Ethics Opinion 84-F-81 (10/17/84); Formal Ethics Opinion 85-F-81(a) (3/4/85).

Structured settlements. Formal Ethics Opinion 85-F-96 (5/31/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

The ethical consequences of settlement negotiations which include provisions relating to attorney's fees. Formal Ethics Opinions 85-F-96(a) (9/26/86).

The propriety of an attorney who acted as a substitute trustee for a lender at a nonjudicial foreclosure sale, and having sold the property to the lender, now making an offer to purchase the property from the lender. Former Ethics Opinion 86-F-108 (9/26/86).

The propriety of representing litigants upon employment of a paralegal who had duties involving opposing parties while formerly employed by adverse counsel. Formal Ethics Opinion 87-F-110 (6/10/87).

The propriety of accepting employment by an insurer on behalf of an insured with conditions limiting or directing the scope and extent of pre-trial discovery. Formal Ethics Opinion 88-F-113.

Arrangement proposed by the attorney is clearly improper whereby attorney would loan funds to client's ex-husband so that ex-husband could pay past due child support; an attorney is prohibited from acquiring a proprietary interest in the subject matter of litigation he is conducting. By providing the means to pay the child support, the attorney is obtaining a proprietary interest in the subject matter of the litigation. Formal Ethics Opinion 94-F-134(A) (12/9/94).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

NOTES TO DECISIONS

ANALYSIS

1. Conflict of Interest.
2. Transactions Between Client and Lawyer.
3. Attorney's Fees.
4. No Conflict.

1. Conflict of Interest.

Where a law firm accepted post-dated checks from debtors for dischargeable debts and did not advise the debtors that the debts were at least potentially dischargeable, the firm created a conflict of interest under Tenn. Sup. Ct.

R. 8, RPC 1.8(a). In re Lawson, 437 B.R. 609, 2010 Bankr. LEXIS 3022 (Bankr. E.D. Tenn. Aug. 31, 2010).

2. Transactions Between Client and Lawyer.

In a group of Chapter 7 cases, the fees charged by the debtors' attorneys were subject to disgorgement because, among other reasons, the attorneys apparently violated Tenn. Sup. Ct. R. 8, RPC 1.8(a) by requiring the debtors to issue post-dated checks, but did not inform their clients that their attorney fee, to the extent it had not been paid prior to the filing date, could be discharged in the bankruptcy

case. An accurate advisement of the law would have required disclosure to the debtors that the issue of dischargeability of the fees provided for in the engagement contracts was unresolved in the Sixth Circuit, but had been considered by several courts, the majority of which concluded the debt was dischargeable. *In re Waldo*, 417 B.R. 854, 2009 Bankr. LEXIS 3453 (Bankr. E.D. Tenn. Oct. 27, 2009).

3. Attorney's Fees.

Record supported the hearing panel's conclusion that the attorney violated Tenn. Sup. Ct. R. 8, DR 1.5(a), (c) and 1.8(i), because the fee agreement, providing for payment of a contingent fee on the basis of an offer that the attorney recommended the client accept regardless of whether the client obtained any recovery, was clearly a say to pressure the client to accept a settlement offer if advised to do so by the attorney and thus was unreasonable. *Moore v. Bd. of Prof'l Responsibility of the*

Supreme Court of Tenn., 576 S.W.3d 341, 2019 Tenn. LEXIS 207 (Tenn. May 13, 2019).

4. No Conflict.

Trial court properly denied defendant's application for pre-trial diversion because he did not present anything other than a "suspicion" of impropriety sufficient to disqualify the entire prosecutor's office where the letter from the prosecutor's office in response to defendant's application addressed the factors that a prosecutor must consider when granting or denying an application for pre-trial diversion, included a recitation of defendant's employment history with the district attorney's office stating that his deceptive behavior, considered in tandem with his behavior in the instant offenses, led to the conclusions that he was not amenable to correction and that the public's interest would not be served by granting pre-trial diversion. *State v. Woodard*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 72 (Tenn. Crim. App. Feb. 5, 2019).

Rule 1.9. Duties to Former Clients. — (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by RPCs 1.6 and 1.9(c) that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.

Comment.

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Current and former government lawyers must comply with this Rule only to the extent required by RPC 1.11.

Changing Sides in a Matter

[1a] Representing one side in a lawsuit and then switching to represent the other in the same matter clearly implicates loyalty to the first client and protection of that client's confi-

dences. Similar considerations apply in non-litigation matters. Thus, a lawyer negotiating a complex agreement on behalf of a seller could not withdraw and represent the buyer against the interests of the seller in the same transaction. Nor could a lawyer who has represented multiple clients in a matter ordinarily represent one of the clients against the others in the same matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. *See* Comment [9].

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The appropriateness

of the subsequent representation will depend on the scope of the representation in the former matter, the scope of the proposed representation in the current matter, and its relationship to the former matter. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type, even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Substantially Related Matters

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or other work the lawyer performed for the former client or if there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter, unless that information has become generally known. Any conclusion or presumption concerning the type of confidential factual information that would normally have been obtained in the prior representation may be overcome or rebutted by the lawyer by proof concerning the information actually received in the prior representation.

Loyalty to Former Client

[3a] Matters are substantially related if they involve the same transaction or legal dispute or other work the lawyer performed for the former client. For example, a lawyer may not on behalf of a later client attack the validity of a document that the lawyer drafted if doing so would materially and adversely affect the former client. Similarly, a lawyer may not represent a debtor in bankruptcy in seeking to set aside a security interest of a creditor that is embodied in a document that the lawyer previously drafted for the creditor. Although the subsequent representation is a different matter, it is substantially related to the former matter because it involves work done for the former client. The lawyer's duty of loyalty survives the termination of the former representation to the extent that it precludes the lawyer from acting to deprive the former client of the benefit of the lawyer's prior work on the former client's behalf.

Protecting Confidentiality

[3b] Even where the current matter does not involve the work previously done by the lawyer for the former client, it may still be substantially related to the former matter if there is a substantial risk that confidential factual information that would normally be obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then ordinarily represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

[3c] Formerly confidential information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. Information that might be confidential for some purposes under these Rules (so that, for example, a lawyer would not be free to discuss it publicly) might nonetheless be so general, readily observable, or of so little value in the subsequent litigation that it should not by itself result in a substantial relationship being found. Thus, a lawyer may master a particular substantive area of the law while representing a client, but that does not preclude the lawyer from later representing another client adversely to the first in a matter involving the same legal issues, if the facts are not substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. For example, a lawyer might also have learned a former client's preferred approach to bargaining in settlement discussions or negotiating business points in a transaction, willingness or unwillingness to be deposed by an adversary, or financial ability to withstand extended litigation or contract negotiations. Only when such information will be directly in issue or of unusual value in the subsequent matter will it be independently relevant in assessing a substantial relationship.

[3d] Inquiries concerning the existence, exchange, and potential for use of such confidential information may themselves raise concerns and difficulties. A concern to protect a former client's confidential information would be self-defeating if, in order to obtain its protection, the former client were required to reveal in a public proceeding the particular communication or other confidential information that could be used in the subsequent representation. On the other hand, closed or in camera proceedings may implicate issues of fairness to other parties. Further, the interests of subsequent clients also militate against extensive inquiry into the precise nature of the lawyer's representation of the subsequent client and the nature of exchanges between them.

[3e] The substantial relationship test attempts to avoid requiring actual disclosure of confidential information by focusing upon the general features of the matters involved and inferences as to the likelihood that confidences were imparted by the former client that could be used to adverse effect in the subsequent representation. Thus, a former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. In the first instance, a preliminary conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services. Consistent with the preservation of the former client's confidentiality, however, the inquiry into the issues involved in the prior representation should be as specific as possible, so as to avoid undue impairment of the subsequent client's interest in selection of counsel of choice and the capacity of the lawyer, within appropriate limits, to defeat any presumption or inference concerning the lawyer's receipt or exchange of confidential information.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move

from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by RPCs 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See RPC 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients. In the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See RPCs 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be revealed by the lawyer or used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using or disclosing generally known information about that client when later representing another client.

[8a] Whether information is generally known depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories, such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of ac-

cess. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known. A lawyer may not, however, justify adverse use or disclosure of client information simply because the information has become known to third persons, if it is not otherwise generally known. Even if permitted to disclose information relating to a former client's representation, a lawyer should not do so unnecessarily.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). *See* RPC 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to RPC 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see RPC 1.10.

Relation to Other Rules

[10] Except in situations governed by RPCs 1.11 and 6.5(a), RPC 1.9 applies in all circumstances in which a lawyer has previously represented a client as an advocate, an advisor, an intermediary, or an author of a legal opinion to be rendered on behalf of a client for use by a third person. Except as provided in RPC 2.4, RPC 1.9 does not apply to parties being served by a lawyer as a dispute resolution neutral. If, however, the lawyer's service as a neutral will be materially adverse to a former client and the dispute is substantially related to the former representation, the lawyer must afford the former client the protections of RPC 1.9.

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Firm" *See* RPC 1.0(c)

"Informed consent" *See* RPC 1.0(e)

"Knowingly" and "known" *See* RPC 1.0(f)

"Material" and "materially" *See* RPC 1.0(o)

"Substantially" *See* RPC 1.0(l)

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Burying the Hatchet: Do Tennessee's New Screening Rules Leave the Clinard Handle Sticking Out? (Sonda L. Gifford), 70 Tenn. L. Rev. 201 (2002).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennen), 25 No. 3 Tenn. B.J. 24 (1989).

Ethics 2000 and Conflicts of Interest: The More Things Change. (Charles W. Wolfram), 70 Tenn. L. Rev. 27 (2002).

Legal Ethics-Attorney Conflicts of Interest-The Effect of Screening Procedures and the Appearance of Impropriety Standard on the Vicarious Disqualification of a Law Firm (Luke W. Hunt), 70 Tenn. L. Rev. 251 (2002).

Disciplinary Board Opinions. It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is improper to represent insureds in a class action against an insurance company after previously representing such company. Formal Ethics Opinion 84-F-65 (1/18/84).

An attorney may represent a client and the client's health insurance provider claiming a subrogation interest for medical bills of the client if it is obvious that the attorney can adequately represent the interests of each and if each consents, preferably in writing, to the representation after full disclosure of the possible effect of such representation. Formal Opinion 95-F-136 (9/8/95).

NOTES TO DECISIONS

ANALYSIS

1. Applicability.
2. No Conflict Shown.
3. Conflict of Interest.

1. Applicability.

Trial court did not err in analyzing the conflict of interest involving the law firm and its attorneys under the rule for current clients; the law firm could not purge its concurrent conflict by withdrawing from its representation of one

client in another case, and the court rejected appellants' argument that the issue should have been analyzed under the rule for former clients. Howell v. Morisy, — S.W.3d —, 2020 Tenn. App. LEXIS 526 (Tenn. Ct. App. Nov. 20, 2020).

2. No Conflict Shown.

Trial court did not abuse its discretion in refusing to disqualify the sheriff's attorney where it had not been shown that the interests of the sheriff in his official capacity were ad-

verse to the interests of the sheriff in his individual capacity in the other cases. *Moody v. Hutchison*, 247 S.W.3d 187, 2007 Tenn. App. LEXIS 581 (Tenn. Ct. App. Sept. 17, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 144 (Tenn. Mar. 3, 2008).

3. Conflict of Interest.

Law firm was not entitled to judgment on the pleadings in a legal malpractice action because, although the law firm alleged that a former

client waived any conflict of interest in a signed engagement letter, the former client sufficiently alleged in the client's complaint that the law firm continued to represent the client's former employer on a substantially related matter after the law firm withdrew from representing the client and that the former employer's interests were materially adverse to the client's interests as a former client. *Culpepper v. Baker*, — S.W.3d —, 2020 Tenn. App. LEXIS 460 (Tenn. Ct. App. Oct. 16, 2020).

Rule 1.10. Imputation of Conflicts of Interest: General Rule. — (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPCs 1.7, 1.9 or 2.2, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by RPCs 1.6 and 1.9(c) that is material to the matter.

(c) Except with respect to paragraph (d) below, if a lawyer is personally disqualified from representing a person with interests adverse to a client of a law firm with which the lawyer was formerly associated, other lawyers currently associated in a firm with the personally disqualified lawyer may represent the person, notwithstanding paragraph (a) above, if both the personally disqualified lawyer and the lawyers who will represent the person on behalf of the firm act reasonably to:

(1) identify that the personally disqualified lawyer is prohibited from participating in the representation of the current client; and

(2) determine that no lawyer representing the current client has acquired any information from the personally disqualified lawyer that is material to the current matter and is protected by RPC 1.9(c);

(3) promptly implement screening procedures to effectively prevent the flow of information about the matter between the personally disqualified lawyer and the other lawyers in the firm; and

(4) advise the former client in writing of the circumstances that warranted the implementation of the screening procedures required by this Rule and of the actions that have been taken to comply with this Rule.

(d) The procedures set forth in paragraph (c) may not be used to avoid imputed disqualification of the firm, if:

(1) the disqualified lawyer was substantially involved in the representation of a former client; and

(2) the lawyer's representation of the former client was in connection with an adjudicative proceeding that is directly adverse to the interests of a current client of the firm; and

(3) the proceeding between the firm's current client and the lawyer's former client is still pending at the time the lawyer changes firms.

(e) A disqualification prescribed by this Rule may be waived by the affected client or former client under the conditions stated in RPC 1.7.

(f) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by RPC 1.11.

Comment.

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association in which lawyers may practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See RPC 1.0(c) (defining "Firm" or "Law Firm"). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See RPC 1.0, Comments [2]-[4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by RPCs 1.9(b) and 1.10(b), (c) and (d).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] [Intentionally omitted]

Lawyers Moving Between Firms

[5] When a lawyer who is associated in a firm leaves the firm, the question of whether a lawyer should undertake representation adverse to clients of the former firm is more complicated. There are several competing considerations. First, the client previously repre-

sented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised and that confidential information related to the representation will not be used to the client's disadvantage. Second, the rule should not be cast so broadly as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[6] Paragraphs (a) and (b) govern the vicarious disqualification of a law firm in the situation in which a lawyer leaves the firm and continues or undertakes the representation of a client previously represented by the firm, the firm is no longer representing the client, and lawyers who have remained in the firm are asked to undertake a representation materially adverse to the firm's former client. If the new matter is substantially related to a matter in which the firm previously represented the client, the firm, absent the former client's consent, will be precluded by paragraph (a) from undertaking the representation if any lawyer remaining in the firm would be precluded by RPC 1.9(a) from doing so because the lawyer had participated in the client's prior representation. Alternatively, paragraph (b) precludes the firm from undertaking the representation if any lawyer remaining in the firm has information protected by RPCs 1.6 and 1.9(c) that is material to the matter. If, on the other hand, no remaining lawyer participated in the client's representation or possessed confidential information, the firm is permitted to undertake the representation even though it is materially adverse to the former client in a substantially related matter.

[7] Paragraph (c) addresses the situation in which a lawyer leaves one law firm and joins another firm that is representing a client with interests materially adverse to a client of the new lawyer's former firm. The new lawyer may

be personally disqualified from participating in the representation of some of the new firm's clients because of his or her prior representation of, or acquisition of confidential information about, clients of his or her former law firm. With one limited exception addressed in paragraph (d), this personal disqualification will not be imputed to other lawyers in the personally disqualified lawyer's new firm if they act reasonably to protect the confidentiality interests of the person being represented by the personally disqualified lawyer's former firm.

[8] Paragraph (c) sets forth the measures that must be taken in order to protect the confidentiality interests of the client being represented by the personally disqualified lawyer's former firm. Requirements for screening procedures are stated in RPC 1.0(k) and RPC 1.0, Comments [8]-[10]. Whether a firm's screening procedures are effective to prevent the flow of information about the matter between the personally disqualified lawyer and the other lawyers in the firm is a question of fact. Factors to be considered include a written affirmation by the personally disqualified lawyer and the lawyers and firm personnel handling the matter in question that they are aware of and will abide by the screening procedures implemented by the firm; the structural organization of the law firm or office; the likelihood of contact between the personally disqualified lawyer and the lawyers handling the matter in question; and the existence of firm rules and a filing system that prevents unauthorized access to files with respect to the matter in question. The question to be asked in each case is whether the screening mechanism effectively reduces to an acceptable level the potential for misuse of information related to the representation of the personally disqualified lawyer's former client. The writing required by paragraph (c)(4) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules. This writing is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

[9] The "appearance of impropriety" standard existing under the Code of Professional Responsibility has not been retained in these rules. Paragraph (d), however, restates the rule of law established by *Clinard v. Blackwood*, 46 S.W.3d 177 (Tenn. 2001). In that case, the Tennessee Supreme Court held that screening mechanisms were generally not effective to avoid imputed disqualification of a law firm when a lawyer was perceived as "switching teams" in the course of pending litigation. Although the holding of *Clinard* was grounded in

the prior standard from the Code of Professional Responsibility guarding against the "appearance of impropriety," the Court also noted that its holding was necessary to further lawyer-client communications and to avoid the impression that the judiciary favors considerations of lawyer mobility over those of client confidentiality. Consequently, the *Clinard* rule continues under the present Rules. As was the case in *Clinard*, this narrow exception to paragraph (c) will vicariously disqualify the law firm only when the interests of a client of that firm are presently and directly adverse with those of a person who was formerly represented in substantial part by the disqualified lawyer.

[10] A client may give informed consent to a representation proscribed by this rule under the same conditions required for informed consent of a representation proscribed by RPC 1.7. As with RPC 1.7, prior to seeking a client's informed consent, the lawyer must reasonably believe that the representation can be undertaken without material adverse effect. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see RPC 1.7, Comment [22]. For a definition of informed consent, see RPC 1.0(e).

[10a] The requirements set forth in this rule include law clerks, paralegals, secretaries, and other staff employed by a firm, with due regard to their levels of responsibility in the matter.

[11] Where a lawyer has joined a private firm after having represented the government, imputation is governed by RPC 1.11(b) and (c), not this Rule. Under RPC 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment, or in another government agency, imputation is governed by RPC 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including RPCs 1.6, 1.7, and 1.9(c).

[12] Where a lawyer is prohibited from engaging in certain transactions under RPC 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[13] The disqualification of lawyers associated in a firm with a former judge or arbitrator is governed by RPC 1.12. The disqualification of lawyers associated in a firm with a lawyer disqualified from a matter as a result of obligations under RPC 1.18 flowing from a consultation with a prospective client is governed by RPC 1.18(d).

Definitional Cross-References

- "Firm" and "Law Firm" See RPC 1.0(c)
- "Material" and "materially" See RPC 1.0(o)
- "Reasonably" See RPC 1.0(h)
- "Screening" See RPC 1.0(k)
- "Substantially" See RPC 1.0(l)
- "Writing" See RPC 1.0(n)

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Burying the Hatchet: Do Tennessee's New Screening Rules Leave the Clinard Handle Sticking Out? (Sonda L. Gifford), 70 Tenn. L. Rev. 201 (2002).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennen), 25 No. 3 Tenn. B.J. 24 (1989).

Ethics 2000 and Conflicts of Interest: The More Things Change. (Charles W. Wolfram), 70 Tenn. L. Rev. 27 (2002).

Legal Ethics-Attorney Conflicts of Interest-The Effect of Screening Procedures and the Appearance of Impropriety Standard on the Vicarious Disqualification of a Law Firm (Luke W. Hunt), 70 Tenn. L. Rev. 251 (2002).

Disciplinary Board Opinions. Conflicts of interest while serving as agent for title insurance company. Formal Ethics Opinion 80-F-2 (10/28/80).

It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

If attorney practicing with a firm representing a plaintiff transfers to another firm engaged in defending the same lawsuit, the latter firm will be disqualified from further participation in the case. Formal Ethics Opinion 81-F-5 (4/17/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

An attorney is prohibited from representing a plaintiff while his associate serves as registered agent for service of process for the defendant. Formal Ethics Opinion 82-F-38 (12/16/82).

A partner or associate of the county attorney is prohibited from representing criminal defendants prosecuted by the county sheriff. Formal Ethics Opinion 83-F-41 (4/14/83).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

It is improper for a county attorney to counsel the county in preparation of the county budget and also represent the sheriff or deputy sheriffs to increase their budget or salaries. Formal Ethics Opinion 83-F-53 (8/12/83).

Existence of attorney-client relationship between a district attorney who provides child support enforcement services and the recipient of a public assistance grant. Formal Ethics Opinion 83-F-55 (8/24/83).

Conflict of interest to represent a sheriff for alleged civil rights action and represent criminal

defendants where sheriff is material witness. Formal Ethics Opinion 83-F-56 (9/22/83).

A partner or associate of the city attorney is prohibited from representing criminal defendants prosecuted by the city police department. Formal Ethics Opinion 83-F-57 (10/24/83).

Judge of the county juvenile court representing the county school board in an action against the county commission. Formal Ethics Opinion 83-F-58 (11/4/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is improper to represent insureds in a class action against an insurance company after previously representing such company. Formal Ethics Opinion 84-F-65 (1/18/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

It is improper for a county attorney to assist a county official in filing a pro se petition against the county executive and to assist the parties in preparing and executing an agreed pro se order granting salary increases to the deputy clerk. Formal Ethics Opinion 85-F-83 (1/2/85).

Conflict of interest to represent a criminal defendant upon appointment by the court and personally represent the county sheriff in a civil matter when deputy sheriff will testify against the indigent defendant. Formal Ethics Opinion 85-F-92 (5/6/85).

Following the withdrawal of representing a client due to personal reasons, a partner or associate of the attorney may undertake representation of the client. Formal Ethics Opinion 85-F-93 (5/6/85).

The ethical propriety of representation adverse to a former client. Formal Ethics Opinion 86-F-104 (3/4/86).

The propriety of representing litigants upon employment of a paralegal who had duties involving opposing parties while formerly employed by adverse counsel. Formal Ethics Opinion 87-F-110 (6/10/87).

The vicarious disqualification of the entire staff of a district attorney general when one member of the staff is disqualified from handling a particular matter. Formal Ethics Opinion 87-F-111 (9/16/87).

Screening procedures as a viable method to avoid imputed disqualification. Formal Ethics Opinion 89-F-118 (3/10/89).

Propriety of defense attorneys retained by insurance companies to represent the insurance company's insureds and taking certain actions solely because the insurance company directs them to do so. Formal Ethics Opinion 2000-F-145 (9/08/00).

Imputed disqualification and screening provisions apply not only when lawyers switch firms, but when non-lawyer personnel switch

firms as well. Formal Ethics Opinion 2003-F-147 (6/13/03).

Waiver of imputed disqualification and screening provisions can occur only after a consultation, which "shall include explanation of the implications of the common representation and the advantages and risks involved." Formal Ethics Opinion No. 2003-F-147 (6/13/03).

NOTES TO DECISIONS

1. Prosecutor.

This rule is the general rule governing the imputation of conflicts of interests but that Tenn. Sup. Ct. R. Prof. Conduct 8, 1.11, the specialized rule regarding public service attorneys, applies to whether a disqualified prosecu-

tor's conflict of interests should be imputed upon a district attorney general's office. *State v. Orrick*, 592 S.W.3d 877, 2018 Tenn. Crim. App. LEXIS 768 (Tenn. Crim. App. July 15, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 116 (Tenn. Feb. 21, 2019).

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees. — (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to RPC 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless both the personally disqualified lawyer and the lawyers who are representing the client in the matter act reasonably to:

(1) ascertain that the personally disqualified lawyer is prohibited from participating in the representation of the current client; and

(2) determine that no lawyer representing the client has acquired any material confidential government information relating to the matter; and

(3) promptly implement screening procedures to effectively prevent the flow of information about the matter between the personally disqualified lawyer and other lawyers in the firm; and

(4) advise the government agency in writing of the circumstances that warranted the utilization of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and

which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if both the personally disqualified lawyer and the lawyers who are representing the client in the matter comply with the requirements set forth in paragraph (b).

(d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee:

(1) is subject to RPCs 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing, or under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(ii) negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a staff attorney to a court or as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private employment as permitted by RPC 1.12(b) and subject to the conditions stated in RPC 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in RPC 1.7 and the protections afforded former clients in RPC 1.9. In addition, such a lawyer is subject to RPC 1.11 and to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See RPC 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a private client. Although RPC 1.10 is not applicable to the conflicts of interest addressed by this Rule, paragraph (b) of this Rule permits screening and notice to avoid imputation for lawyers moving into, or out of, positions as government officers or employees in the same manner as set forth for other lawyers in RPC 1.10(c). Requirements for screening procedures are stated in RPC 1.0(k) and RPC 1.0, Com-

ments [8]-[10]. Because of the problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), RPC 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and a private client, the risk exists that power or discretion vested in that agency might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. *See* RPC 1.13, Comment [8].

[6] Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with RPC 1.11 and to take appropriate action if it believes the lawyer is not complying.

[7] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.

[8] Paragraphs (b) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by RPC 1.7 and is not otherwise prohibited by law.

[9] Paragraph (d) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[11] In the absence of other law to the contrary, a government official or entity, like any other client, may waive a conflict of interest under this Rule.

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Firm" *See* RPC 1.0(c)

"Informed consent" *See* RPC 1.0(e)

"Knowingly" and "knows" *See* RPC 1.0(f)

"Material" *See* RPC 1.0(o)

"Reasonably" *See* RPC 1.0(h)

"Screening" *See* RPC 1.0(k)

"Substantially" *See* RPC 1.0(l)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

'Disciplinary Board Opinions. If attorney practicing with a firm representing a plaintiff transfers to another firm engaged in defending the same lawsuit, the latter firm will be disqualified from further participation in the case. Formal Ethics Opinion 81-F-5 (4/17/81).

It is improper to represent insureds in a class action against an insurance company after previously representing such company. Formal Ethics Opinion 84-F-65 (1/18/84).

NOTES TO DECISIONS

1. Motion to Disqualify.

Trial court abused its discretion by granting defendant's motion because the disqualifying conflict of interests of an assistant district attorney, who had previously represented defendant in the instant case, did not warrant vicarious disqualification of the district attorney general's office, as the adequate screening procedures prevented the disclosure of defendant's confidential information. The record showed that the assistant district attorney was prohibited from participating in defendant's prosecution and she did not provide anyone working in the district attorney's office with information related to defendant's case. *State v. Orrick*, 592 S.W.3d 877, 2018 Tenn. Crim. App. LEXIS 768 (Tenn. Crim. App. July 15, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 116 (Tenn. Feb. 21, 2019).

Tenn. Sup. Ct. R. Prof. Conduct 8, 1.10 is the

general rule governing the imputation of conflicts of interests but this rule, the specialized rule regarding public service attorneys, applies to whether a disqualified prosecutor's conflict of interests should be imputed upon a district attorney general's office. *State v. Orrick*, 592 S.W.3d 877, 2018 Tenn. Crim. App. LEXIS 768 (Tenn. Crim. App. July 15, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 116 (Tenn. Feb. 21, 2019).

This rule is the applicable ethical authority when considering whether the conflict of interests of a disqualified assistant district attorney general should be vicariously imputed upon a district attorney general's office. *State v. Orrick*, 592 S.W.3d 877, 2018 Tenn. Crim. App. LEXIS 768 (Tenn. Crim. App. July 15, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 116 (Tenn. Feb. 21, 2019).

Rule 1.12. Former Judge or Arbitrator. — (a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk or staff attorney to such a person or as an arbitrator, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator. A lawyer serving as a staff attorney to a court or as a law clerk to a judge or other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the lawyer is participating personally and substantially, but only after the lawyer has notified the court, judge, other adjudicative officer, or arbitrator.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless both the disqualified lawyer and the lawyers representing the client in the matter have complied with the requirements set forth in RPC 1.11(b)(1), (b)(2), and (b)(3) and have advised the appropriate tribunal in writing of the circumstances that warranted the utilization of the screening procedures required by this Rule and the actions that have been taken to comply with this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment.

[1] This Rule generally parallels RPC 1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to RPC 1.11. The term “adjudicative officer” includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. The provisions of Tennessee Supreme Court Rule 10 concerning the Application of the Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not “act as a lawyer in any proceeding in which the judge has served as a judge or in any other proceeding related thereto.” Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation, unless all of the parties to the proceedings give their informed

consent, confirmed in writing. See RPC 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See RPC 2.4.

[3] [Intentionally omitted]

[4] Requirements for screening procedures are stated in RPC 1.0(k) and RPC 1.0, Comments [8]-[10].

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Definitional Cross-References

“Confirmed in writing” See RPC 1.0(b)

“Firm” See RPC 1.0(c)

“Informed consent” See RPC 1.0(e)

“Knowingly” See RPC 1.0(f)

“Screening” See RPC 1.0(k)

“Substantially” See RPC 1.0(l)

“Tribunal” See RPC 1.0(m)

“Writing” See RPC 1.0(n)

Disciplinary Board Opinions. An attorney or his firm is prohibited from accepting employment in any matter upon the merits of which he or a member of his firm has acted in a judicial capacity. Formal Ethics Opinion 81-F-15 (8/26/81).

An attorney may not bring a class action to recover wrongful assessment of court costs in juvenile court when he sat as special juvenile judge on limited occasions and wrongfully assessed such costs. Formal Ethics Opinion 82-F-32 (6/18/82).

Rule 1.13. Organizational Clients. — (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and is likely to result in substantial injury to the organization, the lawyer may withdraw in accordance with RPC 1.16 and may make such disclosures of information relating to the organization's representation only to the extent permitted to do so by RPCs 1.6 and 4.1.

(d) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(e) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(f) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of RPCs 1.7 and 2.2. If the organization's consent to the dual representation is required by RPC 1.7 or RPC 2.2, the consent shall be given by an appropriate official of the organization, other than the individual who is to be represented, or by the shareholders.

Comment.

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by RPC 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by RPC 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by RPC 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the

organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in RPC 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider or take action to rectify the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons

outside the organization. Even in circumstances where a lawyer is not obligated by RPC 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under RPCs 1.6, 1.8, 1.16, 3.3, or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, RPCs 1.6(b)(1), 1.6(b)(2), and 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances RPC 1.2(d) may also be applicable, in which event, withdrawal from the representation under RPC 1.16(a)(1) may be required.

[7] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[8] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope, Comment [19]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a

matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[9] There are times when the organization's interest may be or become adverse to the interest of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[10] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[11] Paragraph (f) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[12] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[13] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circum-

stances, RPC 1.7 governs who should represent the directors and the organization.

Definitional Cross-References

"Knows" *See* RPC 1.0(f)

"Reasonably" *See* RPC 1.0(h)

"Reasonably believes" *See* RPC 1.0(i)

"Reasonably should know" *See* RPC 1.0(j)

"Substantial" *See* RPC 1.0(l)

Law Reviews. Dual Identities and Dueling Obligations: Preserving Independence in Corporate Representation, 68 Tenn. L. Rev. 179 (2001).

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

The Ethical and Professional Responsibilities of the Lawyer for the Corporation in Responding to Fraudulent Conduct by Corporate Officers or Agents (Chief Justice E. Norman Veasey), 70 Tenn. L. Rev. 1 (2002).

Disciplinary Board Opinions. Plaintiff's attorney accepting an offer of settlement from a defendant's insurance career. Formal Ethics Opinion 80-F-1 (9/5/80); Formal Ethics Opinion 80-F-1 Supp (4/16/81).

Conflicts of interest while serving as agent for title insurance company. Formal Ethics Opinion 80-F-2 (10/28/80).

It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

Existence of attorney-client relationship between a district attorney who provides child support enforcement services and the recipient of a public assistance grant. Formal Ethics Opinion 83-F-55 (8/24/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is improper for an attorney to share his legal fees with the communal religious order to which he belongs. Formal Ethics Opinion 84-F-62 (1/18/84).

FDIC salaried staff attorney is prohibited from requesting reimbursement from third party debtors, pursuant to the terms of a promissory note, for legal services expended in the collection of the notes owned and held by FDIC. Formal Ethics Opinion 84-F-67 (3/13/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Structured settlements. Formal Ethics Opinion 85-F-96 (5/31/85).

The ethical consequences of settlement negotiations which include provisions relating to attorney's fees. Formal Ethics Opinions 85-F-96 (a) (9/26/86).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

Rule 1.14. Client with Diminished Capacity. — (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless

action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by RPC 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under RPC 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment.

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or has a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client has a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer for the purpose of assisting the lawyer with the client's representation. When a lawyer considers such participation by family members or others, the lawyer should consider the effect of their presence on the applicability of the attorney-client privilege – a question of law that is beyond the scope of these Rules. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to

the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See* RPC 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether

appointment of a guardian ad litem, conservator, or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by RPC 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Legal Assistance

[9] If the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person

is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such a situation, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity who is threatened with imminent and irreparable harm should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.

Definitional Cross-References

"Reasonably" See RPC 1.0(h)

"Reasonably believes" See RPC 1.0(i)

Law Reviews. A Quantum Leap for Ethical Guidance: Comparison of the Model Code and Rule 1.14 of the Proposed Rules of Professional Conduct (Donna S. Harkness), 35 No. 11 Tenn. B.J. 20 (1999).

Hearing Stories Already Told: Successfully Incorporating Third Party Professionals into the Attorney — Client Relationship, 80 Tenn. L. Rev. 1 (2012).

Disciplinary Board Opinions. The ethical obligation of a court appointed attorney for a death sentenced person in a proceeding for post conviction relief, where the client has a history of being treated for mental illness, and has filed a pro se motion seeking to dismiss his petition, waiving all his rights and reinstating the execution date. Formal Ethics Opinion 92-F-129 (1992).

Rule 1.15. Safekeeping Property and Funds. — (a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of

the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest on Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of property or funds in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property or funds as to which the interests are not in dispute.

(f) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will

not succeed, the lawyer must remit the funds to the Tennessee Lawyers' Fund for Client Protection (TLFCP). No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (f).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to TLFCP, which after verification of the claim will return the funds to the lawyer. (Amended by order filed August 18, 2014, effective upon filing; amended by order filed and effective October 4, 2016; amended by order filed and effective June 5, 2020.)

Comment.

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted and reasonable internal control procedures and comply with any recordkeeping rules established by law or court order. *See, e.g.*, Tenn. Sup. Ct. R. 9.

[2] Paragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account. All such accounts, including IOLTA accounts, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 35.1.

[3] Under Supreme Court Rule 43, Tennessee lawyers are required to report their compliance with their obligations concerning their IOLTA accounts and the handling of client funds and to comply with the technical requirements for establishing and operating such accounts. This RPC requires Tennessee lawyers to establish IOLTA accounts only at eligible financial institutions. Tennessee lawyers may rely upon the list of eligible financial institutions maintained pursuant to Rule 43 in establishing an IOLTA account to comply with subparagraph (b)(2).

[4] A lawyer is also responsible for assuring the payment of any financial institution service charges or fees on such trust accounts. Subparagraph (b)(1) of this Rule makes clear that any interest earned on non-IOLTA trust accounts belongs to the client or third party whose funds generate the interest, and that the interest earned on them may be used by a lawyer to pay bank charges or fees. A detailed accounting of such interest and fees may be necessary to avoid the payment of any client- or matter-specific financial institution service charges or fees (for example, charges for a

certified check obtained solely for the benefit of one client) by a client other than the one on whose behalf the charge or fee was incurred.

[5] In determining whether client or third-person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer should take into consideration a number of factors, including the amount of funds to be deposited; the expected duration of the deposit; the rate of interest or yield available from the financial institution where the funds are to be deposited; the service charges, fees, and other costs that are reasonably expected to be associated with the deposit of funds; the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that are reasonably likely to affect the ability of the client or third person to earn income, in excess of any service charges, fees, or other costs incurred to secure such income from the funds.

[6] Subparagraph (b)(3) expressly recognizes that a lawyer's decision concerning whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) is a discretionary one, and provides that a lawyer who makes such a determination in good faith shall not be subject to any disciplinary sanction for this decision. A lawyer or law firm should review the account at reasonable intervals to determine if the amount of the funds or expected duration changes the type of account in which funds should be deposited.

[7] In no event may overdraft charges imposed upon a trust account be paid from interest on a trust account.

[8] In order to allow a lawyer to pay appropriate financial institution service charges or fees on a trust account, paragraph (b) of the Rule expressly relaxes the prohibition on commingling lawyer and client funds in a trust account to permit a lawyer to deposit the lawyer's own funds in the trust account for the sole purpose of paying financial institution service

charges or fees, but only in an amount reasonably necessary for that very limited purpose. Lawyers should exercise great care in using this limited permission to deposit funds in a trust account, given the cardinal importance of the principle otherwise banning commingling of funds.

[9] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's position. The disputed portion of the funds must be kept in trust, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[10] Whether a fee that is prepaid by a client should be placed in the client trust account depends on when the fee is earned by the lawyer. An advance payment of funds upon which the lawyer may draw for payment of the lawyer's fee when it is earned or for reimbursement of the lawyer for expenses when they are incurred must be placed in the client trust account. When the lawyer earns the fee, the funds shall be promptly withdrawn from the client trust account, and timely notice of the withdrawal of funds should be provided to the client. RPC 1.16(d) requires the refund to the client of any part of a fee that is not earned by the lawyer at the time that the representation is terminated. See RPC 1.5, Comment [4] for a discussion of two situations in which an advance payment from a client is properly treated as an earned fee and therefore cannot be placed in the lawyer's client trust account.

[11] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client and accordingly may refuse to surrender the funds or other property to the client. However, a lawyer should not unilaterally assume to resolve a dispute between the client and the third party.

[12] When two or more persons (one of whom may be the lawyer) have substantial grounds for dispute as to the person entitled to the funds or other property held by the lawyer, the lawyer, with due regard to his or her confidentiality obligations under RPC 1.6, may file an action to have a court resolve the dispute, including an interpleader action.

[13] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating

to fiduciaries even though the lawyer does not render legal services in the transaction.

[14] In certain circumstances, Tennessee law governing abandoned property may apply to monies in lawyer trust accounts or other property left in the hands of lawyers and may govern its disposition. See Tenn. Code Ann. §§ 66-29-101 to 66-29-204 (Uniform Disposition of Unclaimed Property Act).

[15] Paragraph (a) of this Rule requires a lawyer to hold property and funds of clients or third persons separate from the lawyer's own property and funds. In addition, paragraph (b) provides that a lawyer may deposit the lawyer's own funds in a separate trust account "for the sole purpose of paying financial institution service charges and fees..., but only in an amount reasonably necessary for that purpose." Taken together, those provisions require a lawyer to promptly withdraw from the lawyer's trust account any legal fees earned by the lawyer. Additionally, the lawyer may not pay his or her own personal or professional expenses directly from the trust account, even if the trust account temporarily contains legal fees earned by the lawyer; instead, the lawyer must withdraw earned legal fees from the trust account and deposit those funds into the lawyer's own account, from which the lawyer will pay his or her expenses. See, e.g., *Bd. of Prof'l Responsibility v. Allison*, 284 S.W.3d 316, 324-25 (Tenn. 2009).

Definitional Cross-References

"Reasonably" See RPC 1.0(h)

Compiler's Notes. In its order filed October 4, 2016, the Supreme Court provided: "On July 13, 2016, the Board of Professional Responsibility of the Supreme Court of Tennessee ("BPR") and the Tennessee Bar Foundation filed a petition asking the Court to amend Rule 8, RPC 1.15 and Rule 43 of the Rules of the Tennessee Supreme Court to allow attorneys to deposit trust funds in federally insured credit unions.

"On August 18, 2016, the Court filed an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was Monday, September 19, 2016. The Court received only one written comment during the comment period, a comment from the Tennessee Credit Union League supporting the proposed amendments and suggesting that the Court also amend Rule 9, section 35.2(a) of the Rules of the Tennessee Supreme Court to create consistency among the rules.

"After due consideration, the Court hereby adopts the amendments to Rule 8, RPC 1.15, Rule 9, section 35.2(a), and Rule 43 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Family Law — Alexander v. Inman: The Tennessee Court of Appeals Establishes Guidelines for Contingent Attorneys'

Fees in Domestic Relation Cases, 26 U. Mem. L. Rev. 1575 (1996).

Disciplinary Board Opinions. It is improper for an attorney to remit excess funds accumulated from interest on attorney's fees to clients. Formal Ethics Opinion 82-F-30 (6/18/82).

An appellate brief prepared and filed by an attorney and a trial transcript furnished to an attorney are property of the client. Formal Ethics Opinion 83-F-42 (4/14/83).

Client's funds in interest-bearing accounts. Formal Ethics Opinion 84-F-68 (5/29/84).

Guidelines to divide a settlement fee between attorney and client. Formal Ethics Opinion 84-F-77 (10/17/84).

Settlement of a case and handling of settlement proceeds when attorney is unable to communicate with a client. Formal Ethics Opinion 85-F-90 (3/13/85).

Lawyers of Tennessee may not give the interest derived from a trust account to a charity designated by the lawyer. Formal Ethics Opinion 85-F-97 (8/22/85).

The attorney's retention of clients' documents in an effort to enforce resolution of a fee

dispute between the attorney and client. Formal Ethics Opinion 86-F-106 (9/26/86).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

The mechanics of trust accounting. Formal Ethics Opinion 89-F-121 (9/9/89).

The ethical/fiduciary responsibilities relating to retainer fees, advanced fees, advanced costs and expenses, flat fees, pre-paid fees, and non-refundable retainer fees. Formal Ethics Opinion 92-F-128 (1992).

Arrangement proposed by the attorney is clearly improper whereby attorney would loan funds to client's ex-husband so that ex-husband could pay past due child support; an attorney is prohibited from acquiring a proprietary interest in the subject matter of litigation he is conducting. By providing the means to pay the child support, the attorney is obtaining a proprietary interest in the subject matter of the litigation. Formal Ethics Opinion 94-F-134(A) (12/9/94).

NOTES TO DECISIONS

ANALYSIS

1. Appropriate Sanction.
2. Improper Conduct.
3. Discipline.
4. Fees.

1. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; (3) failed to have written attorney fee agree-

ments signed by clients; and (4) did not keep a client's funds separate from the attorney's operating funds. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Debtors' attorney violated a number of the Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a suspension from practice before the court was appropriate. *In re Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

2. Improper Conduct.

Attorney was suspended after violating the disciplinary rules by taking funds from a client trust account and writing a bad check to his associate on the account, and by making early withdrawals from several other client trust accounts. *Milligan v. Bd. of Prof'l Responsibility*, 166 S.W.3d 665, 2005 Tenn. LEXIS 601 (Tenn. 2005).

Attorney's spoken overview of disbursements does not qualify as an appropriate account to

the client, within the meaning of former Tenn. Sup. Ct. R. 8, DR 9-102(B)(3), or a full accounting, pursuant to the former version of Tenn. Sup. Ct. R. 8, RPC 1.15(b). *Threadgill v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 299 S.W.3d 792, 2009 Tenn. LEXIS 736 (Tenn. Nov. 30, 2009), overruled in part, *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 2012 Tenn. LEXIS 469 (Tenn. July 3, 2012).

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.15(a), 1.16, 8.4, and 1.4(a) was supported by substantial and material evidence because the attorney and his client gave conflicting testimony on whether the written fee agreement was subsequently modified by an oral agreement that permitted the attorney to treat \$7,500 as an earned fee and the hearing panel credited the client's version of events. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

3. Discipline.

Balance of aggravating and mitigating circumstances supported a one-year suspension

for violation of Tenn. Sup. Ct. R. 8, RPC 1.15(a), (b), and (c), and other rules, because the attorney's long experience in the practice of law warranted a meaningful suspension and the attorney engaged in a pattern of financial misconduct, violating the same rules in his representation of multiple clients. *Threadgill v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 299 S.W.3d 792, 2009 Tenn. LEXIS 736 (Tenn. Nov. 30, 2009), overruled in part, *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 2012 Tenn. LEXIS 469 (Tenn. July 3, 2012).

4. Fees.

Fee a client paid to an attorney was not earned upon receipt by the attorney because the fee agreement provided that the fee would be held in escrow, and the attorney's hourly fees would be charged against the retainer; therefore, the payment was considered as security to ensure payment for legal services to be provided in the future and not merely to assure the attorney's availability. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Rule 1.16. Declining or Terminating Representation. — (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in a violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or imprudent;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists; or

(8) the client gives informed consent confirmed in writing to the withdrawal of the lawyer.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to

do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include:

- (1) giving reasonable notice to the client;
- (2) allowing time for the employment of other counsel;
- (3) cooperating with any successor counsel engaged by the client;
- (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated;
- (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation; and
- (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

Comment.

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See RPCs 1.2(c) and 6.5; see also RPC 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also RPC 6.2; Tenn. Sup. Ct. R. 14. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. See, e.g., Tenn. Crim. Ct. App. R. 12. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations

to both clients and the court under RPCs 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable for the lawyer to prepare a written statement reciting the circumstances. In the special case of in-house counsel, the organizational employer may also be liable for damages for retaliatory discharge in violation of public policy, but because of the client's right to discharge the lawyer, reinstatement would not be an available remedy under such circumstances.

[5] Whether a client can discharge appointed counsel may depend on other law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in RPC 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw for any reason if it can be accomplished without material adverse effect

on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on taking action that the lawyer considers repugnant or imprudent. The lawyer may also withdraw without the need to provide any justification and even if withdrawal would result in a material adverse effect on the client's interests if the client provides informed consent confirmed in writing to the lawyer's withdrawal.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation. The lawyer must, however, give the client reasonable notice of the lawyer's intention to withdraw.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. After discharge or withdrawal from representation of the client, the lawyer may retain work product prepared by the lawyer for the client, but for which the lawyer has not been compensated, as security for a fee only if doing so will not have a materially adverse effect on the client with respect to the subject matter of the representation and to the extent permitted by law. The lawyer may, at the lawyer's own expense, make a copy of client file materials for retention by the lawyer prior to surrender.

[10] Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Fraud" and "fraudulent" *See* RPC 1.0(d)
 "Informed consent" *See* RPC 1.0(e)
 "Material" and "materially" *See* RPC 1.0(o)
 "Reasonable" *See* RPC 1.0(h)
 "Reasonably believes" *See* RPC 1.0(i)
 "Substantial" and "substantially" *See* RPC 1.0(l)
 "Tribunal" *See* RPC 1.0(m)
 "Writing" *See* RPC 1.0(n)

Law Reviews. A Remedy for the Discharge of Professional Employees Who Refuse to Perform Unethical or Illegal Acts: A Proposal in Aid of Professional Ethics (Jon P. Christiansen), 28 Vand. L. Rev. 805.

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

The attorney's retention of clients' documents in an effort to enforce resolution of a fee dispute between the attorney and client. Formal Ethics Opinion 86-F-106 (9/26/86).

The ethical/fiduciary responsibilities relating to retainer fees, advanced fees, advanced costs and expenses, flat fees, pre-paid fees, and non-refundable retainer fees. Formal Ethics Opinion 92-F-128 (1992).

Right of attorney appointed on behalf of minor seeking abortion via judicial bypass procedure to decline the appointment for moral, religious or malpractice insurance reasons. Formal Ethics Opinion 96-F-140 (6/13/96).

Duties of defense counsel where capital defendant instructs counsel not to investigate or present mitigating evidence. Formal Ethics Opinion 84-F-73(a) (3/16/99).

NOTES TO DECISIONS

ANALYSIS

1. Disbarment.
2. Violation.
3. Withdrawal.

1. Disbarment.

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) did not keep a client's funds separate from the

attorney's operating funds; and (3) failed to cooperate with successor counsel. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

2. Violation.

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.15(a), 1.16, 8.4, and 1.4(a) was supported by substantial and material evidence because the attorney and his client gave conflicting testi-

money on whether the written fee agreement was subsequently modified by an oral agreement that permitted the attorney to treat \$7,500 as an earned fee and the hearing panel credited the client's version of events. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

Tennessee Board of Professional Responsibility properly applied the Tennessee Rules of Professional Conduct because an attorney pointed to no difference between the new and old versions of the rule that would have affected the decision of the hearing panel; the attorney failed to show any prejudice that resulted from application of the pre-amendment version. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

Finding that an attorney violated the rule was supported by substantial and material evidence because the attorney refused to return key items to the clients. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

There was substantial and material evidence that the attorney failed to return unearned fees because the fee agreement the client signed did not provide for a nonrefundable fee, and the attorney retained an unearned fee and failed to refund the balance to the client. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

3. Withdrawal.

In the absence of proof that a parent was aware of the termination of parental rights trial date, the appellate court was reluctant to conclude that the parent's failure to appear coupled with appointed counsel's unsupported allegations of lack of communication were sufficient to show that the parent effectively waived the right to appointed counsel. The court also was concerned that the record was devoid of anything that indicated whether counsel provided the parent any prior warning that counsel planned to withdraw the morning of trial. *In re A.P.*, — S.W.3d —, 2019 Tenn. App. LEXIS 163 (Tenn. Ct. App. Mar. 29, 2019).

Rule 1.17. Sale of Law Practice. — A lawyer or a law firm may sell or purchase a law practice, or a subject-area of law practice, including goodwill, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the subject-area of practice that has been sold, in the geographic area in which the practice has been conducted;

(b) The entire practice, or the entire subject-area of practice, is sold to one or more lawyers or law firms, and the seller provides the buyer with written notice of the fee agreement with each of the seller's clients and any other agreements relating to each client's representation; and

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale, including the expected effective date of the proposed sale, the identity and office address of the purchaser, a brief description of the size and nature of the purchaser's practice and its capacity to assume the representation of the client in accordance with the Rules of Professional Conduct;

(2) the client's right to retain other counsel or to take possession of the file and any other property or funds in the possession of the selling lawyer to which the client is entitled;

(3) the duties of the purchasing lawyer under paragraph (d) and (e) of this Rule, and

(4) the fact that the client's informed consent to representation by the purchaser and the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction or by the presiding judge in the judicial district in which the seller resides. The seller may disclose to the court in camera information relating to the representation only to the extent

necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged each client shall not be increased by reason of the sale; and

(e) The purchasing lawyer shall abide by any other agreements between the selling lawyer and the client with respect to the representation as are permitted by these Rules. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in a subject-area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. *See* RPCs 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of a subject-area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the subject-area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to assume judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon vacating the judicial office.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to an organization.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Tennessee is sufficiently large that a move from one locale therein to another may justify allowing the lawyer to sell his or her practice. Thus, the Rule permits the sale of the practice when the lawyer leaves the geographic area in which he or she is practicing.

[5] This Rule also permits a lawyer or law firm to sell a subject-area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-

counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by RPC 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Subject-Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire subject-area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of RPC 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. *See* RPC 1.6(b)(6). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the information specified in paragraphs (c)(1)-(3), and must also be informed in writing that the decision to

consent or make other arrangements must be made within thirty (30) days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (*see* RPC 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (*see* RPC 1.7 regarding conflicts and RPC 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (*see* RPCs 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. *See* RPC 1.16.

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, dis-

abled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice. This Rule also does not apply to mergers between firms.

Definitional Cross-References

"Law Firm" *See* RPC 1.0(c)

"Informed consent" *See* RPC 1.0(e)

"Written" *See* RPC 1.0(n)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Rule 1.18. Duties to Prospective Client. — (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as RPC 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that prospective client in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client.

(e) When no client-lawyer relationship ensues, a prospective client is entitled, upon request, to have the lawyer return all papers and property in the lawyer's possession, custody, or control that were provided by the prospective client to the lawyer in connection with consideration of the prospective client's matter. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably

understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information

to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by RPC 1.9, even if the client or lawyer decides not to proceed with the representation. This duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring information from a prospective client that could be significantly harmful if used in the matter, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under RPC 1.7, then consent from all affected present clients must be obtained before accepting the representation.

[5] With the informed consent of the prospective client, a lawyer and a prospective client can agree in advance that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See RPC 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter, unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in RPC 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See RPC 1.0(k) and comment [8]-[10] (requirements for screening procedures).

[8] Notice, including a general description of the subject matter about which the lawyer was

consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see RPC 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see RPC 1.15.

Definitional Cross-References

"Confirmed in writing" See RPC 1.0(b)

"Firm" See RPC 1.0(c)

"Informed consent" See RPC 1.0(e)

"Knowing" See RPC 1.0(f)

"Reasonable" and "reasonably" See RPC 1.0(h)

"Screened" See RPC 1.0(k)

"Written" See RPC 1.0(n)

"Materially" See RPC 1.0(p)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

CHAPTER 2

THE LAWYER AS COUNSELOR, INTERMEDIARY, AND DISPUTE RESOLUTION NEUTRAL

Rule 2.1. Advisor. — In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Comment.**Scope of Advice**

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as an advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in

substantial adverse legal consequences to the client, the lawyer's duty to the client under RPC 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under RPC 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Definitional Cross-References

None.

Law Reviews. Attorneys' Liability for Errors of Judgment — At the Crossroads (Ronald E. Mallen and David W. Evans), 48 Tenn. L. Rev. 283.

Balancing the Budget on the Backs of America's Elderly — Section 4734 of the Balanced Budget Act: Criminalization of the Attorney's Role as Advisor and Counselor, 29 U. Mem. L. Rev. 165 (1998).

Resisting the Current, 52 Vand. L. Rev. 1015(1999).

Speaking Truth to Powerlessness, 52 Vand. L. Rev. 995 (1999).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. It is improper for an attorney to share his legal fees with the communal religious order to which he belongs. Formal Ethics Opinion 84-F-62 (1/18/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. Formal Ethics Opinion 85-F-85 (1/2/85); Formal Ethics Opinion 85-F-85(a) (3/4/85).

Court-appointed attorneys for minors seeking abortions via judicial bypass of parental consent serves not as guardian ad litem but as advocate for the minor; such counsel must not fail to seek the minor's lawful objective, and has a duty of undivided loyalty to the minor. Formal Ethics Opinion 96-F-140 (6/13/96).

Rule 2.2. Lawyer Serving as an Intermediary Between Clients. —

(a) A lawyer represents clients as an intermediary when the lawyer provides impartial legal advice and assistance to two or more clients who are engaged in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them.

(b) A lawyer shall not represent two or more clients as an intermediary in a matter unless:

(1) as between the clients, the lawyer reasonably believes that the matter can be resolved on terms compatible with the best interests of each of the clients, that each client will be able to make adequately informed decisions in the matter, that there is little risk of material prejudice to the interest of any of the clients if the contemplated resolution is unsuccessful, and that the intermediation can be undertaken impartially;

(2) the lawyer's representation of another client, responsibilities to a former client or a third person, or the lawyer's personal interests, or the representation, responsibilities, or personal interests of a lawyer associated with the lawyer in a firm will not prevent the lawyer from providing competent and diligent representation to each of the clients the lawyer will serve as an intermediary;

(3) the lawyer discusses with each client:

(i) the lawyer's responsibilities as an intermediary;

(ii) the implications of the intermediation (including the advantages and risks involved, the effect of the intermediation on the attorney-client privilege, and the effect of the intermediation on any other obligation of confidentiality the lawyer may have);

(iii) any circumstances that will materially affect the lawyer's impartiality between the clients; and

(iv) the lawyer's representation in another matter of a client whose interests are directly adverse to the interests of any one of the clients, and any responsibility of the lawyer to a former client or a third person, and any personal interest of the lawyer, or the representation, responsibilities, or personal interests of a lawyer associated with the lawyer in a firm that presents a significant risk of materially limiting the lawyer's representation of a client the lawyer will serve as an intermediary; and

(4) each client gives informed consent, confirmed in writing, to the lawyer's representation, and each client authorizes the lawyer to disclose to each of the other clients being represented in the matter any information relating to the representation to the extent that the lawyer reasonably believes is required to comply with RPC 1.4.

(c) While representing clients as an intermediary, the lawyer shall:

(1) act impartially to assist the clients in accomplishing their common objective;

(2) as between the clients, treat information relating to the intermediation as information protected by RPC 1.6 that the lawyer has been authorized by each client to disclose to the other clients to the extent the lawyer reasonably believes necessary for the lawyer to comply with RPC 1.4; and

(3) discuss with each client the decisions to be made with respect to the intermediation and the considerations relevant in making them, so that each client can make adequately informed decisions.

(d) A lawyer shall withdraw from service as an intermediary if:

(1) any of the clients so requests;

(2) any of the clients revokes the lawyer's authority to disclose to the other clients any information that the lawyer would be required by RPC 1.4 to reveal to them; or

(3) any of the other conditions stated in paragraph (b) are no longer satisfied.

(e) If the lawyer's withdrawal is required by paragraph (d)(2), the lawyer shall so advise each client of the withdrawal, but shall do so without any further disclosure of information protected by RPC 1.6.

Comment.

[1] A lawyer acts as an intermediary under this Rule when the lawyer represents two or more clients who are cooperatively trying to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them. The hallmarks of an intermediation include the impartiality of the lawyer who serves as an intermediary; the open, candid, and non-adversarial nature of the clients' pursuit of a common objective; and the limited subject matters in which a lawyer may serve multiple clients as an intermediary (i.e., the adjustment of a consensual legal relationship among or between the clients). Because intermediation differs significantly from the partisan role normally played by lawyers, and because it requires that the lawyer be impartial as between the clients rather than an advocate on behalf of each, a lawyer should only undertake this role with client consent after consultation about the distinctive features of this role. Also, given the risks associated with joint representation of parties whose interests may potentially be in conflict, the Rule provides a number of safeguards designed to limit its applicability and to protect the interests of the several clients.

[2] Paragraph (b) specifies the circumstances in which a lawyer may serve multiple clients as an intermediary. With respect to the clients being served by an intermediary, this Rule, and not RPC 1.7, applies. RPC 1.7 remains applicable, however, to protect other clients the lawyer may be representing or may wish to represent in other matters. For example, if the lawyer's representation of two clients as an intermediary in a matter will materially limit the lawyer's representation of another client the lawyer is representing as an advocate, the lawyer must afford that client the protections of RPC 1.7. Similarly, if the lawyer's representation of two clients as an intermediary would be materially adverse to one of the lawyer's former clients and the matters are

substantially related, the lawyer must afford the former client the protections of RPC 1.9.

[3] RPC 2.2 does not apply to a lawyer acting as a dispute resolution neutral, such as an arbitrator or a mediator, as the parties to a dispute resolution proceeding are not clients of the lawyer, even where the lawyer has been appointed with the concurrence of the parties. Other rules of conduct govern a lawyer's service as a dispute resolution neutral. *See* RPC 2.4; Tenn. Sup. Ct. R. 31.

[4] Because this Rule only applies to the formation, conduct, modification or termination of consensual legal relationships between clients, it does not apply to the representation of multiple clients in connection with gratuitous transfers or other matters in which there is not a quid pro quo exchange. Thus, for example, conflicts of interest arising from the representation of multiple clients in estate planning or the administration of an estate are governed by RPC 1.7 rather than by this Rule. If, however, the effectuation of an estate plan or other gratuitous transfer entails the formation, modification or termination of a consensual legal relationship between clients, and the lawyer acts as an intermediary in connection with the transaction, this Rule, and not RPC 1.7, will apply.

[5] A lawyer may act as an intermediary in seeking to establish or adjust a consensual legal relationship among or between clients on an amicable and mutually advantageous basis, such as helping to organize a business in which two or more clients are entrepreneurs or working out the financial reorganization of an enterprise in which two or more clients have an interest. As part of the work of an intermediary, the lawyer may seek to achieve the clients' common objective or to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative may be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complications, or

even litigation. Given these and other relevant factors, each client may prefer to have one lawyer act as an intermediary for all rather than hiring a separate lawyer to serve as his or her partisan.

[6] In considering whether to act as an intermediary between clients, a lawyer should be mindful that if the intermediation fails the result can be additional cost, embarrassment, and recrimination. In some situations, the risk of failure is so great that intermediation is plainly impossible or imprudent for the lawyer or the clients. For example, a lawyer cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations, as is often the case when dissolution of a marriage is involved. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

[7] The appropriateness of intermediation can depend on its form. Forms of intermediation range from an informal "facilitation," in which the lawyer's responsibilities are limited to presenting alternatives from which the clients will choose, to a full-blown representation in which the lawyer provides all legal services needed in connection with the proposed transaction. One form may be appropriate in circumstances where another would not. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis; whether the situation involves creating a relationship between the parties or terminating one; the relative experience, sophistication, and economic bargaining power of the clients; and the existence of prior familial, business, or legal relationships.

Confidentiality and Privilege

[8] A particularly important factor in determining the appropriateness of intermediation is the effect on client-lawyer confidentiality and the attorney-client privilege. In a common representation, the lawyer is still required both to keep each client adequately informed and to maintain confidentiality of information relating to the representation. *See* RPCs 1.4 and 1.6. Complying with both requirements while acting as an intermediary requires a delicate balance. If the balance cannot be maintained, the common representation is improper.

[9] Paragraphs (b)(4) and (c)(2) make clear that the obligations of attorney-client confidentiality apply to clients being served by a lawyer as an intermediary, but that, as between the clients being so served, confidentiality is inappropriate and must be waived by each of the clients. Thus, while the lawyer must maintain confidentiality as against strangers to the relationship, the lawyer has no such duty to keep information provided to the lawyer by one client confidential from the other clients. More-

over, the lawyer may well, depending on the circumstances, have an affirmative obligation to disclose such information obtained from one client to other clients. Obviously, this important implication of the lawyer's responsibilities as an intermediary must be disclosed and explained to the clients.

[10] Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Informed Consent

[11] In acting as an intermediary between clients, the lawyer is required to discuss with the clients the implications of doing so and may proceed only upon informed consent, confirmed in writing. The discussion should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances.

[12] Paragraph (c)(3) is an application of the principle expressed in RPC 1.4. Where the lawyer is an intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

Withdrawal

[13] Common representation does not diminish the rights of each client in the client-lawyer relationship. Each client has the right to loyal and diligent representation, the right to discharge the lawyer as stated in RPC 1.16, and the protection of RPC 1.9 concerning obligations to a former client.

[14] Because of the obligations of a lawyer serving as an intermediary to the intermediation clients, the lawyer must withdraw from the representation if any of the intermediation clients so requests; if one or more of the clients denies the lawyer the authority to disclose certain information to any of the remaining clients, thereby preventing the lawyer from being able to discharge the lawyer's duties to the remaining clients to communicate with them and disclose information to them; or if any of the various predicate requirements for intermediation can no longer be satisfied.

[15] Upon withdrawal from the role of intermediary or completion of an intermediation, the lawyer must afford all of the clients formerly served as an intermediary the protections of RPCs 1.9 and 1.10.

Definitional Cross-References

"Confirmed in writing" *See* RPC 1.0(b)

"Informed consent" *See* RPC 1.0(e)

"Material" and "materially" *See* RPC 1.0(o)

"Reasonably believes" *See* RPC 1.0(i)

Law Reviews. Conflicts of Interest and Imputed Disqualification: The Chinese Wall in

Tennessee (Charles W. Bone & Keith C. Denman), 25 No. 3 Tenn. B.J. 24 (1989).

Ethical Issues Facing Lawyer-Spouses and Their Employers, 35 Vand. L. Rev. 1435.

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

How the New Ethics Rules Affect Estate Planners (Dan W. Holbrook), 39 No. 4 Tenn. B.J. 31 (2003).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

Disciplinary Board Opinions. Conflicts of interest while serving as agent for title insurance company. Formal Ethics Opinion 80-F-2 (10/28/80)

It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and

members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

Where both husband and wife are lawyers not practicing in association with one another, they or their firms may represent differing interests. Formal Ethics Opinion 82-F-31 (6/18/82).

Existence of attorney-client relationship between a district attorney who provides child support enforcement services and the recipient of a public assistance grant. Formal Ethics Opinion 83-F-55 (8/24/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

There is no impropriety in a law firm leasing non-lawyer staff personnel from a third party lessor/employer. Formal Ethics Opinion 85-F-99 (9/12/85).

Rule 2.3. Evaluation for Use by Third Persons. — (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by RPC 1.6.

Comment.
Definition

[1] An evaluation for use by third persons may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See RPC 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties, for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency, for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In

other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[1a] Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer

relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as an advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of

search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. *See* RPC 4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by RPC 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. *See* RPC 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. *See* RPCs 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Definitional Cross-References

"Informed consent" *See* RPC 1.0(e)

"Reasonably believes" *See* RPC 1.0(i)

"Reasonably should know" *See* RPC 1.0(j)

"Materially" *See* RPC 1.0(o)

Disciplinary Board Opinions. An attorney may give information provided by clients to accountants and/or computer tax services retained by the attorney to assist in the preparation of clients' tax returns. Formal Ethics Opinion 82-F-35 (10/18/82).

Rule 2.4. Lawyer as a Dispute Resolution Neutral. — (a) A lawyer serves as a dispute resolution neutral when the lawyer impartially assists two or more persons who are not clients of the lawyer to reach a resolution of disputes that have arisen between them. Service as a dispute resolution neutral may include service as a mediator; an arbitrator whose decision does not bind the parties; a case evaluator; a judge or juror in a mini-trial or summary jury trial as described in Supreme Court Rule 31; or in such other

capacity as will enable the lawyer to impartially assist the parties resolve their dispute.

(b) A lawyer may serve as a dispute resolution neutral in a matter if:

(1) the lawyer is competent to handle the matter;

(2) the lawyer can handle the matter without undue delay;

(3) the lawyer reasonably believes he or she can be impartial as between the parties;

(4) none of the parties to the dispute is being represented by the lawyer in other matters;

(5) the lawyer's responsibilities to a client, a former client, or a third person, or the lawyer's personal interests will not prevent the lawyer from providing competent and diligent service to each of the persons the lawyer will serve as a dispute resolution neutral;

(6) the lawyer communicates with each of the parties to the dispute, or their attorneys, about the lawyer's qualifications and experience as a dispute resolution neutral, the rules and procedures that will be followed in the proceeding, and the lawyer's responsibilities as a dispute resolution neutral; provided, however, that any party to the dispute who is represented by a lawyer may waive his or her right to all or part of the communication required by this paragraph;

(7) the lawyer communicates with each of the parties, or their lawyers, about any responsibility of the lawyer, or a lawyer associated with the lawyer in a firm, to a client, a former client, or third person, or a personal interest of the lawyer or a lawyer associated with the lawyer in a firm, that presents a significant risk of materially affecting the lawyer's impartiality or materially limiting the dispute resolution services the lawyer will provide to the parties;

(8) unless the service is pursuant to Supreme Court Rule 31, each of the parties, or their attorneys, provides informed consent, confirmed in writing, to the lawyer's service as a dispute resolution neutral in the matter; and

(9) when the service is pursuant to Supreme Court Rule 31, the lawyer is qualified to serve in accordance with the requirements of that Rule.

(c) While serving as a dispute resolution neutral, a lawyer shall:

(1) act reasonably to assure that the parties understand the rules and procedures that will be followed in the proceeding and the lawyer's responsibilities as a dispute resolution neutral;

(2) act impartially, competently, and expeditiously to assist the parties in resolving the matters in dispute;

(3) promote mutual respect among the parties for the dispute resolution process;

(4) as between the parties to the dispute and third persons, treat all information related to the dispute as if it were information protected by RPCs 1.6 and 1.8(b);

(5) as between the parties to the dispute, treat all information obtained in an individual caucus with a party or a party's lawyer as if it were information related to the representation of a client protected by RPCs 1.6 and 1.8(b);

(6) render no legal advice to any party to the dispute, but, if the lawyer believes that an unrepresented party does not understand how a proposed agreement might affect his or her legal rights or obligations, the lawyer shall

advise that party to seek the advice of independent counsel;

(7) accept nothing of value, other than fully disclosed reasonable compensation for services rendered as the dispute resolution neutral, from a party, a party's lawyer, or any other person involved or interested in the dispute resolution process;

(8) not seek to coerce or unfairly influence a party to accept a proposal for resolution of a matter in dispute and shall not make any substantive decisions on behalf of a party; and

(9) when the service is pursuant to Supreme Court Rule 31, comply with all other duties of a dispute resolution neutral as set forth in that Rule.

(d) A lawyer shall withdraw from service as a dispute resolution neutral or, if appointed by a court, shall seek the court's permission to withdraw from service as a dispute resolution neutral, if:

(1) any of the parties so request;

(2) the lawyer reasonably believes that further dispute resolution services will not lead to an agreement resolving the matter in dispute or that any of the parties are unwilling or unable to cooperate with the lawyer's dispute resolution initiatives; or

(3) any of the conditions stated in paragraph (b) are no longer satisfied.

(e) Upon termination of a lawyer's service as a dispute resolution neutral, the lawyer:

(1) may, with the informed consent of all the parties to the dispute and in compliance with the requirements of RPCs 1.2(c) and 2.2, draft a settlement agreement that results from the dispute resolution process, but shall not otherwise represent any or all of the parties in connection with the matter, and

(2) shall afford each party to the dispute the protections afforded a client by RPCs 1.6, 1.8(b), and 1.9.

Comment.

[1] Mediation, arbitration, and other forms of alternative dispute resolution have been in use for many years, but increasing demands in recent years for more prompt and efficient means of resolving disputes of all kinds have led to an increase in the demand for the services of dispute resolution neutrals skilled in the analysis of disputes and in conflict resolution. Lawyers are often particularly well-suited to perform this role and should be encouraged to do so.

[2] Although service as a dispute resolution neutral is considered a law-related service governed generally by these Rules, *see* RPC 5.7, the unique nature of a lawyer's role when serving as a dispute resolution neutral demands separate, more specific treatment in this Rule for the guidance of the profession and the public.

[3] This Rule provides that a lawyer may serve as a dispute resolution neutral, whether as a mediator, a non-binding arbitrator, a case evaluator, or a judge or juror in a mini-trial or summary jury trial. The scope of a lawyer's possible service as a neutral is intended to be generally the same as that adopted in Tennessee Supreme Court Rule 31 governing court-

annexed alternative dispute resolution. However, although Rule 31 covers only court-annexed alternative dispute resolution, this Rule covers services as a dispute resolution neutral whether rendered in connection with court-annexed dispute resolution proceedings or in another, perhaps wholly private, context not covered by Rule 31.

[4] This Rule does not cover the rendering by a lawyer of services related to alternative dispute resolution that are not neutral in nature, but are more judicial in nature, such as service as an arbitrator in a binding arbitration. Although RPC 5.7 may address a lawyer's obligations in such a context, this Rule does not purport to address them.

[5] Although a lawyer who serves as a dispute resolution neutral is subject to the Rules of Professional Conduct, *see* RPC 5.7, many of the Rules do not directly apply to such service because the participants in a dispute resolution proceeding are not the lawyer's clients. Other Rules do apply, however, and this Rule further provides specific applications of certain rules that must apply differently in this context (including, for example, the application of rules governing conflicts of interest).

[6] Although the requirements of this Rule are generally intended to be consistent with those imposed on dispute resolution neutrals under Rule 31, there are duties additional to those set out in Rule 31 that are imposed on lawyers who serve in this role. *See also* Tenn. Sup. Ct. R. 31, Appendix: Standards of Professional Conduct for Rule 31 Mediators. Even though nonlawyers certified by the Supreme Court under Rule 31 as dispute resolution neutrals may not be subject to these Rules and the parties to the dispute are not deemed to be the clients of the lawyer serving as their dispute resolution neutral, the parties are properly entitled to assume that lawyers serving in this capacity are largely subject to the same broad standards of conduct as are applicable to lawyers when they are providing legal services to clients.

[7] The Supreme Court has set forth in Rule 31 rules and standards of professional conduct applicable to all Rule 31 neutrals, including lawyers and nonlawyers. Thus, paragraph (b) contemplates that a lawyer may serve as a Rule 31 neutral if the lawyer complies with these requirements. Paragraph (b)(9) further requires that a lawyer serving as a dispute resolution neutral pursuant to Supreme Court Rule 31 must comply fully with the requirements of that Rule as well.

[8] Paragraph (b) specifies the circumstances in which a lawyer may serve parties to a dispute as a dispute resolution neutral. With respect to the parties to the dispute, RPC 1.7 is inapplicable because there is no client-lawyer relationship between the neutral and the parties to the dispute. RPC 1.7 remains applicable, however, to protect a client, as distinct from parties the lawyer is serving as a neutral, if the lawyer's service as a neutral will materially limit the lawyer's representation of that client. Similarly, if the lawyer's service as a neutral would be materially adverse to one of the lawyer's former clients, and the matters are substantially related, the lawyer must afford the former client the protection of RPC 1.9.

[9] Conflicts of interest for lawyers serving as dispute resolution neutrals are specifically addressed because the parties to a dispute resolution proceeding are not the clients of the dispute resolution neutral. The lawyer serving as neutral, however, must be impartial, must fully disclose any pertinent relationships to the parties to the proceeding, and must obtain their consent to the lawyer's service based on these disclosures. Paragraph (b)(4) does not provide for mandatory vicarious disqualification based on a lawyer's current or prospective service as a dispute resolution neutral. If, however, a lawyer asked to serve as a neutral has a partner who currently represents one of the parties to the dispute in other matters, the lawyer obviously would be required to disclose this fact to the parties under (b)(7) and obtain informed

consent, confirmed in writing, to service as a neutral. Of course, this lawyer must also possess a reasonable belief that impartiality was possible despite this and other such pertinent relationships. If a lawyer may not make the disclosures required by paragraph (b)(7) because of his or her confidentiality obligations to a client, then the lawyer may not serve as a dispute neutral.

[10] Paragraph (c) further provides various standards of conduct particular to service by a lawyer as a dispute resolution neutral. Again, these rules of conduct are intended to be consistent with Rule 31 and to address the particular situation of a neutral who occupies a significantly different relationship to participants in a dispute resolution proceeding than a lawyer does with clients. Paragraphs (c)(4) and (c)(5) treat the confidentiality of all information related to the dispute (including that obtained in individual caucuses with the parties) by analogy to the rules concerning the confidentiality of client information. Thus, for example, any question concerning the potential disclosure of fraud by a participant in a dispute resolution proceeding would be addressed under RPCs 1.6, 3.3, or 4.1 as though the participant were, in fact, a client of the lawyer. Likewise, the ethical duty of a lawyer serving as a dispute resolution neutral to report unethical conduct in a dispute resolution proceeding by a lawyer for a participant is limited by RPC 8.3(c). Other portions of paragraph (c), such as the ban on undisclosed compensation by one of the participants in paragraph (c)(7), the prohibition on coercion or decision making on behalf of parties in paragraph (c)(8), and the ban on giving legal advice to the participants in paragraph (c)(6), impose restrictions needed to insure and reinforce the necessary impartiality of the lawyer serving as a dispute resolution neutral.

[11] Paragraph (d) requires that a lawyer serving as a dispute resolution neutral withdraw or seek an appointing court's permission to withdraw in certain specified circumstances, such as a request by a party to do so or the lawyer's reasonable belief that the lawyer's service will not be fruitful.

[12] Paragraph (e) establishes a lawyer's duties toward participants in a dispute resolution proceeding upon the termination of the lawyer's service as a neutral for any reason, whether because a settlement is achieved or because a party requests the lawyer's withdrawal. Given the impartial role of a dispute resolution neutral, it is inappropriate for a lawyer who had served as a dispute resolution neutral to later represent any of the parties to the dispute in connection with the subject matter of that dispute resolution proceeding. This disqualification, however, does not extend to other lawyers associated in a law firm with the dispute resolution neutral. If, however, the parties have successfully resolved their dispute,

paragraph (e)(1) permits the lawyer-neutral to draft the agreement settling their dispute, but this must be done in conformity with RPCs 1.2(c) and 2.2 and only with informed consent.

[13] Further, paragraph (e)(2) provides that, even though the participants to a concluded dispute resolution proceeding were not the clients of the lawyer who served as a dispute resolution neutral in that proceeding, these participants are nevertheless entitled to the protections relating to confidentiality and conflicts of interest afforded by RPCs 1.6, 1.8(b), and 1.9 as if they were former clients.

Definitional Cross-References

“Confirmed in writing” *See* RPC 1.0(b)

“Firm” *See* RPC 1.0(c)

“Informed consent” *See* RPC 1.0(e)

“Materially” *See* RPC 1.0(o)

“Reasonable” and “reasonably” *See* RPC 1.0(h)

“Reasonably believes” *See* RPC 1.0(i)

Law Reviews. Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

Use of Alternative Dispute Resolution in Employment-Related Disputes, 26 U. Mem. L. Rev. 1131 (1996).

CHAPTER 3

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions. — A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment.

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they act reasonably to inform themselves about the facts of their client's case and the law applicable to the case and then act reasonably in determining that they can make good faith arguments in support of their client's position. Such an action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

[3] Although this Rule does not preclude a lawyer for a defendant in a criminal matter

from defending the proceeding so as to require that every element of the case be established, the defense lawyer must not file frivolous motions and must give notice to the prosecution if the lawyer decides to abandon an affirmative defense that the lawyer had previously indicated would be presented in the case.

Definitional Cross-Reference

“Reasonable” *See* RPC 1.0(h)

Law Reviews. A Remedy for the Discharge of Professional Employees Who Refuse to Perform Unethical or Illegal Acts: A Proposal in Aid of Professional Ethics (Jon P. Christiansen), 28 Vand. L. Rev. 805.

Attorneys' Liability for Errors of Judgment — At the Crossroads (Ronald E. Mallen and David W. Evans), 48 Tenn. L. Rev. 283.

Balancing the Budget on the Backs of America's Elderly — Section 4734 of the Balanced Budget Act: Criminalization of the Attorney's Role as Advisor and Counselor, 29 U. Mem. L. Rev. 165 (1998).

Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 Vand. L. Rev. 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 No. 3 Tenn. B.J. 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 No. 6 Tenn. B.J. 35 (1989).

Remedies other than the Tennessee Uniform Administrative Procedures Act “Contested Case” Approach to Dealing with State and

Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Solomon's New Sword: Tennessee's Parenting Plan, The Roles of Attorneys, and the Care Perspective (Wesley Mack Bryant), 70 Tenn. L. Rev. 221 (2002).

The Lawyer as Consensus Builder: Ethics for a New Practice (Carrie Menkel-Meadow), 70 Tenn. L. Rev. 63 (2002).

Disciplinary Board Opinions. It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. Formal

Ethics Opinion 85-F-85 (1/2/85); Formal Ethics Opinion 85-F-85(a) (3/4/85).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

Ethical propriety of criminal defense lawyers filing motions to suppress without any investigation of facts concerning matters contained therein. Formal Ethics Opinion 88-F-117 (12/15/88).

Potential ethical conflicts and ethical responsibilities of attorneys employed in programs administered by Department of Human Services pursuant to Title IV-D of the Federal Social Security Act. Formal Ethics Opinion 90-F-123 (9/14/90).

NOTES TO DECISIONS

ANALYSIS

1. Action for Malicious Prosecution and Abuse of Process.
2. Appropriate Sanction.
3. Misconduct Not Found.

1. Action for Malicious Prosecution and Abuse of Process.

In light of the alternative remedies if an attorney exceeds the bounds of permissible conduct, coupled with the limitations the supreme court of Tennessee has placed on the absolute litigation privilege itself, the court is satisfied that the privilege cannot be exploited as an opportunity to defame with impunity. *Simpson Strong-Tie Co. v. Stewart*, 232 S.W.3d 18, 2007 Tenn. LEXIS 654 (Tenn. Aug. 20, 2007).

2. Appropriate Sanction.

There was clear and convincing evidence that: (1) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.1 and acted in an unprofessional and unethical manner by continuing to argue prosecutorial misconduct although, after a reasonable inquiry, the attorney should have known there was no basis to do so; (2) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.3 and acted in an unprofessional and unethical manner by knowingly making a false statement of fact to a tribunal; (3) The attorney violated Tenn. Sup.

Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (4) The attorney violated Tenn. Sup. Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct that was prejudicial to the administration of justice; because the attorney had been honest and truthful throughout the disciplinary process, he had not misrepresented the nature of the misconduct nor his actions before a magistrate judge, he had been forthcoming and repentant, and he had exhibited heartfelt and genuine remorse, a public admonition was an appropriate sanction. *In re Bell*, 713 F. Supp. 2d 717, 2010 U.S. Dist. LEXIS 57019 (E.D. Tenn. Apr. 9, 2010).

3. Misconduct Not Found.

Failure to find a violation of the rule regarding meritorious claims does not preclude a finding that an attorney has failed to act with the required diligence. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Since it was unclear whether the civil conspiracy claim was moot, the panel properly found that the attorney did not violate the rule for maintaining a frivolous claim. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Rule 3.2. Expediting Litigation. — A lawyer shall make reasonable efforts to expedite litigation.

Comment.

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, such as illness or a conflict with an important family

engagement, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a

justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. For purposes of this Rule, realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Definitional Cross-Reference

"Reasonable" See RPC 1.0(h)

Law Reviews. The Lawyer's Moral Au-

tonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

The ethical obligation of court appointed counsel when the client insists that counsel not oppose the imposition of the death penalty. Formal Ethics Opinion 84-F-73 (6/13/84).

NOTES TO DECISIONS

ANALYSIS

1. Suspension Proper.
2. Disbarment.

1. Suspension Proper.

Forty-five-day suspension of a lawyer's license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer's attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

Record contained ample evidence of injury or potential injury, as the attorney's conduct in all three cases caused potential injury to his clients; the attorney admitted receiving multiple orders requesting status updates and establishing filing deadlines, he ignored each order, and his actions caused both injury and potential injury to the legal system, and the 30 days' active suspension reflected the consideration of the attorney's mitigating circumstances and

was not an abuse of discretion. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

2. Disbarment.

Hearing panel's decision to impose disbarment for an attorney's violation of Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3, 1.4(a) and (b), 3.2, and 8.4(a), and (d) was not arbitrary, capricious, or characterized by an abuse of discretion because on multiple occasions the attorney knowingly failed to perform services for his clients and violated his professional duties, which caused serious or potentially serious injuries to his clients and the legal system; the panel properly found multiple aggravating factors warranting disbarment, including the attorney's substantial experience practicing law, his commission of multiple offenses in violation of numerous disciplinary rules, his pattern of misconduct, his failure to acknowledge wrongdoing, and his incompetence. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Rule 3.3. Candor Toward the Tribunal. — (a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal; or
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) in an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) A lawyer shall not offer evidence the lawyer knows to be false, except that a lawyer who represents a defendant in a criminal proceeding, and who has been denied permission to withdraw from the defendant's representation after compliance with paragraph (f), may allow the client to testify by way of an undirected narrative or take such other action as is necessary to honor the defendant's constitutional rights in connection with the proceeding.

(c) A lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false.

(d) A lawyer may refuse to offer or use evidence, other than the testimony of a client who is a defendant in a criminal matter, that the lawyer reasonably believes is false, misleading, fraudulent or illegally obtained.

(e) If a lawyer knows that the lawyer's client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding, including improper conduct toward a juror or a member of the jury pool, or comes to know, prior to the conclusion of the proceeding, that the client has, during the course of the lawyer's representation, perpetrated such a crime or fraud, the lawyer shall advise the client to refrain from, or to disclose or otherwise rectify, the crime or fraud and shall discuss with the client the consequences of the client's failure to do so.

(f) If a lawyer, after discussion with the client as required by paragraph (e), knows that the client still intends to perpetrate the crime or fraud, or refuses or is unable to disclose or otherwise rectify the crime or fraud, the lawyer shall seek permission of the tribunal to withdraw from the representation of the client and shall inform the tribunal, without further disclosure of information protected by RPC 1.6, that the lawyer's request to withdraw is required by the Rules of Professional Conduct.

(g) A lawyer who, prior to conclusion of the proceeding, comes to know that the lawyer has offered false tangible or documentary evidence shall withdraw or disaffirm such evidence without further disclosure of information protected by RPC 1.6.

(h) A lawyer who, prior to the conclusion of the proceeding, comes to know that a person other than the client has perpetrated a fraud upon the tribunal or otherwise committed an offense against the administration of justice in connection with the proceeding, and in which the lawyer's client was not implicated, shall promptly report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.

(i) A lawyer who, prior to conclusion of the proceeding, comes to know of improper conduct by or toward a juror or a member of the jury pool shall report the improper conduct to the tribunal, even if so doing requires the disclosure of information otherwise protected by RPC 1.6.

(j) If, in response to a lawyer's request to withdraw from the representation of the client or the lawyer's report of a perjury, fraud, or offense against the administration of justice by a person other than the lawyer's client, a tribunal requests additional information that the lawyer can only provide by disclosing information protected by RPC 1.6 or 1.9(c), the lawyer shall comply with the request, but only if finally ordered to do so by the tribunal after the lawyer has asserted on behalf of the client all non-frivolous claims that the information sought by the tribunal is protected by the attorney-client privilege.

Comment.

[1] This Rule governs the conduct of a lawyer who is representing a client in connection with the proceedings of a tribunal, such as a court or an administrative agency acting in an adjudicative capacity. It applies not only when the

lawyer appears before the tribunal, but also when the lawyer participates in activities conducted pursuant to the tribunal's authority, such as pre-trial discovery in a civil matter.

[2] The advocate's task is to present the client's case with persuasive force. Performance

of that duty while maintaining confidences of the client is qualified by the advocate's duty to refrain from assisting a client to perpetrate a fraud upon the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare RPC 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in RPC 1.2(d) not to counsel a client to commit, or assist the client in committing a fraud, applies in litigation. Regarding compliance with RPC 1.2(d), see the Comment to that Rule and also Comments [1] and [7] to RPC 8.4.

Misleading Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Ex Parte Proceedings

[5] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order or one conducted pursuant to RPC 1.7(c), there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. As provided in paragraph (a)(3), the lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Refusing to Offer or Use False Evidence

[6] When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes. The lawyer must similarly refuse to offer a client's testimony that the lawyer knows to be false, except that paragraph (b) permits the lawyer to allow a criminal defendant to testify by way of narrative if the lawyer's request to withdraw, as required by paragraph (f), is denied. Paragraph (c) precludes a lawyer from affirming the validity of, or otherwise using, any evidence the lawyer knows to be false, including the narrative testimony of a criminal defendant.

[7] As provided in paragraph (d), a lawyer has authority to refuse to offer or use testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer or use the testimony of such a client because the lawyer reasonably believes the testimony to be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify.

Wrongdoing in Adjudicative Proceedings by Clients and Others

[8] A lawyer who is representing a client in an adjudicative proceeding and comes to know prior to the completion of the proceeding that the client has perpetrated a fraud or committed perjury or another offense against the administration of justice, or intends to do so before the end of the proceeding, is in a difficult position in which the lawyer must strike a professionally responsible balance between the lawyer's duties of loyalty and confidentiality owed to the client and the equally important duty of the lawyer to avoid assisting the client with the consummation of the fraud or perjury. In all such cases, paragraph (e) requires the lawyer to advise the client to desist from or to rectify the crime or fraud and inform the client of the consequences of a failure to do so. The hard questions come in those rare cases in which the client refuses to reveal the misconduct and prohibits the lawyer from doing so.

[9] Paragraph (f) sets forth the lawyer's responsibilities in situations in which the lawyer's client is implicated in the misconduct. In these situations, the Rules do not permit the lawyer to report the client's offense. Confidentiality under RPC 1.6 prevails over the lawyer's duty of candor to the tribunal. Only if the client is implicated in misconduct by or toward a juror or a member of the jury pool does the lawyer's duty of candor to the tribunal prevail over confidentiality. See paragraph (i).

[10] Although the lawyer may not reveal the client's misconduct, the lawyer must not voluntarily continue to represent the client, for to do so without disclosure of the misconduct would assist the client to consummate the offense. The Rule, therefore, requires the lawyer to seek permission of the tribunal to withdraw from the representation of the client. To increase the likelihood that the tribunal will permit the lawyer to withdraw, the lawyer is also required to inform the tribunal that the request for permission to withdraw is required by the Rules of Professional Conduct. This statement also serves to advise the tribunal that something is amiss without providing the tribunal with any of the information related to the representation that is protected by RPC 1.6. These Rules, therefore, are intended to preserve confidentiality while requiring the lawyer to act so as not to assist the client with the consummation of the fraud. This reflects a judgment that the legal system will be best served by rules that encourage clients to confide in their lawyers, who in turn will advise them to rectify the fraud. Many, if not most, clients will abide by their lawyer's advice, particularly if the lawyer spells out the consequences of failing to do so. At the same time, our legal system and profession cannot permit lawyers to assist clients who refuse to follow their advice and insist on consummating an ongoing fraud.

[11] Once the lawyer has made a request for permission to withdraw, the tribunal may grant or deny the request to withdraw without further inquiry or may seek more information from the lawyer about the reasons for the lawyer's request. If the judge seeks more information, the lawyer must resist disclosure of information protected by RPC 1.6, but only to the extent that the lawyer may do so in compliance with RPC 3.1. If the lawyer cannot make a non-frivolous argument that the information sought by the tribunal is protected by the attorney-client privilege, the lawyer must respond truthfully to the inquiry. If, however, there is a non-frivolous argument that the information sought is privileged, paragraph (h) requires the lawyer to invoke the privilege. Whether to seek an interlocutory appeal from an adverse decision with respect to the claim of privilege is governed by RPCs 1.2 and 3.1.

[12] If a lawyer is required to seek permission from a tribunal to withdraw from the representation of a client in either a civil or criminal proceeding because the client has refused to rectify a perjury or fraud, it is ultimately the responsibility of the tribunal to determine whether the lawyer will be permitted to withdraw from the representation. In a criminal proceeding, however, a decision to permit the lawyer's withdrawal may implicate the constitutional rights of the accused and may even have the effect of precluding further prosecution of the client.

Notwithstanding this possibility, the lawyer must seek permission to withdraw, leaving it to the prosecutor to object to the request and to the tribunal to ultimately determine whether withdrawal is permitted. If permission to withdraw is not granted, the lawyer must continue to represent the client, but cannot assist the client in consummating the fraud or perjury by directly or indirectly using the perjured testimony or false evidence during the current or any subsequent stage of the proceeding. A defense lawyer who complies with these rules acts professionally without regard to the effect of the lawyer's compliance on the outcome of the proceeding.

False Documentary or Tangible Evidence

[13] If a lawyer comes to know that tangible items or documents that the lawyer has previously offered into evidence have been altered or falsified, paragraph (g) requires that the lawyer withdraw or disaffirm the evidence, but does not otherwise permit disclosure of information protected by RPC 1.6. Because disaffirmance, like withdrawal, can be accomplished without disclosure of information protected by RPC 1.6, it is required when necessary for the lawyer to avoid assisting a fraud on the tribunal.

Crimes or Frauds by Persons Other than the Client

[14] Paragraph (h) applies if the lawyer comes to know that a person other than the client has engaged in misconduct in connection with the proceeding. Upon learning prior to the completion of the proceeding that such misconduct has occurred, the lawyer is required by paragraph (e) to promptly reveal the offense to the tribunal. The client's interest in protecting the wrongdoer is not sufficiently important as to override the lawyer's duty of candor to the court and to take affirmative steps to prevent the administration of justice from being tainted by perjury, fraud, or other improper conduct.

Misconduct By or Toward Jurors or Members of Jury Pool

[15] Because jury tampering undermines the institutional mechanism that our adversary system of justice uses to determine the truth or falsity of testimony or evidence, paragraph (i) requires a lawyer who learns prior to the completion of the proceeding that there has been misconduct by or directed toward a juror or prospective juror must reveal the misconduct and the identity of the perpetrator to the tribunal, even if so doing requires disclosure of information protected by RPC 1.6. Paragraph (i) does not require that the lawyer seek permission to withdraw from the further representation of the client in the proceeding, but in cases in which the client is implicated in the jury tampering, the lawyer's continued representation of the client may violate RPC 1.7. RPC 1.16(a)(1) would then require the lawyer to seek permission to withdraw from the case.

Crime or Fraud Discovered After Conclusion of Proceeding

[16] In cases in which the lawyer learns of the client's misconduct after the termination of the proceeding in which the misconduct occurred, the lawyer is prohibited from reporting the client's misconduct to the tribunal. Even though the lawyer may have innocently assisted the client to perpetrate the offense, the lawyer should treat this information as the lawyer would treat information with respect to any past crime a client might have committed. The client's offense will be deemed completed as of the conclusion of the proceeding. An offense that occurs at an earlier stage in the proceeding will be deemed an ongoing offense until the final stage of the proceeding is completed. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for an appeal has passed.

Constitutional Requirements

[17] These Rules apply to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. The obligation of the advocate under these Rules is subordinate to any such constitutional requirement.

Definitional Cross-References

"Fraud" and "fraudulent" *See* RPC 1.0(d)

"Knowingly," "known," and "knows" *See* RPC 1.0(f)

"Material" *See* RPC 1.0(o)

"Reasonably believes" *See* RPC 1.0(i)

"Tribunal" *See* RPC 1.0(m)

Law Reviews. Attorneys' Liability for Errors of Judgment — At the Crossroads (Ronald E. Mallen and David W. Evans), 48 Tenn. L. Rev. 283.

Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 Vand. L. Rev. 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 No. 3 Tenn. B.J. 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 No. 6 Tenn. B.J. 35 (1989).

Mary Carter Agreements, Learn the Inside Deal (June F. Entman), 24 No. 1 Tenn. B.J. 10 (1988).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Solomon's New Sword: Tennessee's Parenting Plan, The Roles of Attorneys, and the Care Perspective (Wesley Mack Bryant), 70 Tenn. L. Rev. 221 (2002).

Spoilation in the Product Liability Context, 27 U. Mem. L. Rev. 663 (1997).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

The Theoretical Foundations of the Proposed Tennessee Rules of Appellate Procedure, III. Some Noteworthy Features of the Rules (John L. Sobieski, Jr.), 45 Tenn. L. Rev. 180.

Disciplinary Board Opinions. It is improper for an attorney to divide his fee with his client. Formal Ethics Opinion 81-F-6 (5/12/81).

Inadmissible and privileged evidence offered to a judge. Formal Ethics Opinion 83-F-45 (4/14/83).

Prejudice to client by reporting ethics violation. Formal Ethics Opinion 84-F-69 (4/12/84).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. Formal Ethics Opinion 85-F-85 (1/2/85); Formal Ethics Opinion 85-F-85(a) (3/4/85).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

Responsibility of an attorney when his/her client has committed perjury. Formal Ethics Opinion 93-F-133 (12/10/93).

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. Improper Conduct.
3. Appropriate Sanction.
4. Illustrative Cases.
5. False Statements.

1. Construction.

Tenn. Sup. Ct. R. 8, RPC 3.3(d) does not clearly prohibit an attorney from offering or using illegally obtained evidence in an adjudicative proceeding, as the rule only says that an attorney may refuse to offer or use illegally obtained evidence; complete ban on offering or using illegally obtained evidence could conflict with an attorney's other ethical obligations, and the official commentary to the rule speaks of an attorney's ethical obligation to consider whether the evidence is trustworthy. Clippard v. Russell (In re Russell), 392 B.R. 315, 2008 Bankr. LEXIS 1629 (Bankr. E.D. Tenn. June 2, 2008).

cative proceeding, as the rule only says that an attorney may refuse to offer or use illegally obtained evidence; complete ban on offering or using illegally obtained evidence could conflict with an attorney's other ethical obligations, and the official commentary to the rule speaks of an attorney's ethical obligation to consider whether the evidence is trustworthy. Clippard v. Russell (In re Russell), 392 B.R. 315, 2008 Bankr. LEXIS 1629 (Bankr. E.D. Tenn. June 2, 2008).

2. Improper Conduct.

Ample substantial and material evidence supported the Board of Professional Responsibility Hearing Panel's findings that a lawyer had violated the Rules of Professional Conduct because the lawyer claimed a paralegal's work as his own; an itemization of fees and costs included entries purporting to describe the lawyer's work on a case that were either identical or nearly identical to entries on the paralegal's invoices that described his work on the case *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information about a federal case because the attorney never disclosed that the case had been dismissed; the federal court's dismissal of the case was relevant and material information that the attorney should have disclosed to an administrative law judge in the multiple conference calls about an administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

3. Appropriate Sanction.

There was clear and convincing evidence that: (1) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.1 and acted in an unprofessional and unethical manner by continuing to argue prosecutorial misconduct although, after a reasonable inquiry, the attorney should have known there was no basis to do so; (2) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.3 and acted in an unprofessional and unethical manner by knowingly making a false statement of fact to a tribunal; (3) The attorney violated Tenn. Sup. Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (4) The attorney violated Tenn. Sup. Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct that was prejudicial to the administration of justice; because the attorney had been honest and truthful throughout the disciplinary process, he had not misrepresented the nature of the misconduct nor his actions before a magistrate judge, he had been forthcoming and repentant, and he had exhibited heartfelt and genuine remorse, a public admonition was an appropriate sanction. *In re Bell*, 713 F. Supp. 2d 717, 2010 U.S. Dist. LEXIS 57019 (E.D. Tenn. Apr. 9, 2010).

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a proce-

dural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers's misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers's misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Hearing panel's findings of fact and conclusions of law supported suspension as the presumptive sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions because the attorney failed to disclose material facts to an administrative law judge, and threatened the judge to coerce action favorable to his client, and made disparaging descriptions of the judge and the tribunal; his conduct impeded a resolution, which was prejudicial to the administration of justice. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

4. Illustrative Cases.

Hospital sought a bench trial under the rule, which places no time limitation on a movant, claiming the recent Tennessee Supreme Court decision indicated that appellant did not have the right to a jury trial in this retaliation case; appellant failed to cite to authority to support the claim that the trial court should have declined to hear the motion because it was made on the eve of trial, plus under the professional conduct rule, an attorney was to be candid towards the tribunal and disclose dispositive legal authority. *Terry v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

Hearing panel's conclusion that an attorney was not to be disciplined for adding a conformed signature of an opposing party by typewriter to a letter and later submitting the letter as an exhibit to a client's affidavit was not arbitrary because the panel had a reasonable basis to conclude that the attorney added the conformed signature with a good faith belief based upon the client's representations that there was a signed original and that the attorney's addition did not constitute falsifying evidence. *Bd. of Prof'l Responsibility v. MacDonald*, 595 S.W.3d 170, 2020 Tenn. LEXIS 66 (Tenn. Feb. 14, 2020).

5. False Statements.

Trial court properly heard a hospital's motion for a nonjury trial despite an employee's contention that the hospital violated the scheduling order because the rule placed no time limitation on the movant; the employee failed to cite to any authority in her brief to support her contention that the trial court should have declined to hear the motion because it was made "on the eve of trial." *Terry v. Jackson-Madison Cty. Gen. Hosp. Dist.*, — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's decision that an attorney's failure to disclose material information violated Tenn. Sup. Ct. R. Prof. Conduct 8, 8.4(c) because the attorney failed to disclose to an administrative law judge material facts from federal litigation known to him; in doing so, the attorney violated his duty of candor to the tribunal and engaged in dishonest conduct. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's conclusion that an attorney violated the rule by failing to disclose material information to an administrative law judge because the attorney was not honest with the judge about the status of a federal case; the attorney's false statement that there were no new developments to report and his failure to disclose the material developments delayed the resolution of the proceeding. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supports the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information to an administrative law judge because his representation that he intended to ask a federal court to stay an administrative appeal ran contrary to the federal court's previous ruling on the issue; ultimately, the attorney did not produce a federal court filing that requested a stay of the administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Rule 3.4. Fairness to Opposing Party and Counsel. — A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; or

(b) falsify evidence, counsel or assist a witness to offer false or misleading testimony; or

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; or

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) in trial,

(1) allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence; or

(2) assert personal knowledge of facts in issue except when testifying as a witness; or

(3) state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information; or

(g) request or assist any person to take action that will render the person unavailable to appear as a witness by way of deposition or at trial; or

(h) offer an inducement to a witness that is prohibited by law; or pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent on the content of his or her testimony or the outcome of the case. A lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying;

(2) reasonable compensation to a witness for that witness's loss of time in attending or testifying; or

(3) a reasonable fee for the professional services of an expert witness.

Comment.

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] Although paragraph (f) broadly prohibits lawyers from taking extrajudicial action to im-

pede informal fact-gathering, it does permit the lawyer to request that the lawyer's client, and relatives, employees, or agents of the client, refrain from voluntarily giving information to another party. This principle follows because such relatives and employees will normally identify their interests with those of the client. *See also* RPC 4.2.

[4] With regard to paragraph (h), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Definitional Cross-References

"Knowingly" *See* RPC 1.0(f)

"Material" *See* RPC 1.0(o)

"Reasonable" and "reasonably" *See* RPC 1.0(h)

"Reasonably believes" *See* RPC 1.0(i)

"Tribunal" *See* RPC 1.0(m)

Law Reviews. *Deceptive Negotiating and High-Toned Morality* (Walter W. Steele, Jr.), 39 *Vand. L. Rev.* 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 *No. 3 Tenn. B.J.* 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 *No. 6 Tenn. B.J.* 35 (1989).

Professional Conduct — Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 *Mem. St. U.L. Rev.* 169 (1991).

Spoilation in the Product Liability Context, 27 *U. Mem. L. Rev.* 663 (1997).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. It is improper for an attorney to assist parties in obtaining a divorce by collusion. Formal Ethics Opinion 81-F-21 (10/1/81).

It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

The prohibition against an attorney communicating with an adverse party whom he knows to be represented by a lawyer does not apply to communications with an employee of the state, where the state alone is the other party to the controversy. Formal Ethics Opinion 82-F-27 (2/22/82).

Need of attorney to identify self and reason for interviewing of witness. Formal Ethics Opinion 83-F-46 (4/14/83); Formal Ethics Opinion 83-F-46(a) (3/13/84); Formal Ethics Opinion 83-F-46(b) (4/29/85).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Lawyers litigating matters wherein presid-

ing judge is the uncle of a law partner. Formal Ethics Opinion 85-F-84 (1/2/85).

Defense counsel interviewing plaintiff's non-defendant treating physician concerning the medical care and treatment given to the plaintiff. Formal Ethics Opinion 85-F-86 (1/14/85).

Any communication by an attorney with an adverse party by subterfuge without the knowledge and consent of the adverse party is prohibited. Formal Ethics Opinion 85-F-89 (3/13/85).

Propriety of an attorney recommending that a client contract with a lay person on a contingent fee basis. Formal Ethics Opinion 85-F-101 (12/16/85).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

A state prosecutor is ethically obliged to avoid any and all communication with defendants without the knowledge and consent of the defendant's attorney. Formal Ethics Opinion 87-F-112 (9/28/87).

Ethical propriety of filing petitions for contempt and attachment against individuals previously represented by counsel without first notifying the individuals' attorneys of record of the intent to do so. Formal Ethics Opinion 88-F-116 (12/15/88).

NOTES TO DECISIONS

ANALYSIS

1. Appropriate Sanction.
2. Suspension.
3. Abusing the Court.
4. Violation.
5. Illustrative Cases.

1. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

2. Suspension.

Chancery court improperly substituted its judgment for that of the hearing panel regarding the weight of the evidence because substantial and material evidence supported the hearing panel's finding that an attorney's behavior warranted suspension; the proof supported the hearing panel's finding that the attorney's conduct caused interference with a legal proceeding and actual or potential injury to the clients or parties, and the length of the suspension was appropriately tailored to the facts. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

3. Abusing the Court.

Simply abusing or insulting the court to get rulings in favor of a client cannot ever be endorsed or justified, and it is especially important that attorneys, who play an integral role in the judicial system, respect the line separating tolerable criticism from unacceptable speech; attorneys who cross this line may not avoid punishment by claiming that their misconduct served the greater good or the interests of their clients, as such exceptions would overwhelm the rules. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

4. Violation.

Ample substantial and material evidence supported the Board of Professional Responsibility Hearing Panel's findings that a lawyer had violated the Rules of Professional Conduct because the lawyer claimed a paralegal's work as his own; an itemization of fees and costs included entries purporting to describe the lawyer's work on a case that were either identical or nearly identical to entries on the paralegal's invoices that described his work on the case *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Defense counsels' failure, upon hearing the prosecutor's comments, to object and ask for a mistrial was prejudicial because it allowed the State to demand a guilty verdict in light of the

prosecutor's assurances that the victim had been "honest." *Arnold v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 72 (Tenn. Crim. App. Feb. 5, 2020).

5. Illustrative Cases.

Hearing panel's conclusion that an attorney was not to be disciplined for adding a conformed signature of an opposing party by typewriter to a letter and later submitting the letter as an exhibit to a client's affidavit was not arbitrary because the panel had a reasonable basis to conclude that the attorney added the conformed signature with a good faith belief based upon the client's representations that there was a signed original and that the attorney's addition did not constitute falsifying evidence. *Bd. of Prof'l Responsibility v. MacDonald*, 595 S.W.3d 170, 2020 Tenn. LEXIS 66 (Tenn. Feb. 14, 2020).

Rule 3.5. Impartiality and Decorum of the Tribunal. — A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate;

or

(3) the communication involves misrepresentation, coercion, duress, or harassment;

(d) conduct a vexatious or harassing investigation of a juror or prospective juror; or

(e) engage in conduct intended to disrupt a tribunal. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Tennessee Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions. For example, a lawyer shall not give or lend anything of value to a judge, judicial officer, or employee of a tribunal, except as permitted by RJC 3.13 of the Code of Judicial Conduct. A lawyer, however, may make a contribution to the campaign fund of a candidate for judicial office in conformity with RJC 4.4 of the Code of Judicial Conduct.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to

do so by law or court order. Unless such a communication is otherwise prohibited by law or court order, paragraph (b) of this Rule would not prohibit a lawyer from communicating with a judge on the merits of the cause in writing if the lawyer promptly delivers a copy of the writing to opposing counsel and to parties who are not represented by counsel because that would not be an ex parte communication.

[3] Paragraph (b) also does not prohibit a lawyer from communicating with a judge in an ex parte hearing to establish the absence of a conflict of interest under RPC 1.7(c). In such proceedings, the lawyer is of course bound by the duty of candor in RPC 3.3(a)(3).

[4] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited

by law or a court order entered in the case or by a federal court rule, but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication. As the Court stated in *State v. Thomas* 813 S.W. 2d. 395 (Tenn. 1991): “After the trial, communication by a lawyer with jurors is permitted so long as he [or she] refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he [or she] could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected.” *Id.* (quoting Tenn. Sup. Ct. R. 8, EC 7-29). The Court went on to state in *Thomas* that “Rule 8 therefore allows post-trial interviews by Counsel with jurors on these matters without the prior approval of the trial court.” *Id.* at 396. Although the Court’s analysis in *Thomas* was based on an earlier version of Rule 8 (i.e., the Code of Professional Responsibility), the foregoing principles quoted from *Thomas* remain valid in the context of RPC 3.5.

[4a] A communication with, or an investigation of, the spouse, child, parent, or sibling of a juror or prospective juror will be deemed a communication with or an investigation of the juror or prospective juror.

[5] The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge, but should avoid reciprocation; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[6] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. *See* RPC 1.0(m).

Definitional Cross-References

“Known” *See* RPC 1.0(f)

“Tribunal” *See* RPC 1.0(m)

Compiler’s Notes. In its order filed February 19, 2015, the Supreme Court provided that: “On July 25, 2014, the Tennessee Bar Association (‘TBA’) filed a ‘Petition...For the Adoption of an Amended Comment to Tenn. Sup. Ct. R. 8, RPC 3.5(c).’ The TBA’s Petition asks the Court ‘to adopt an amended Comment to Rule 8, RPC 3.5(c)...to make clear that the adoption of RPC 3.5(c) effective January 1, 2011] was not intended to, and did not, overturn long-settled precedent prohibiting courts from restricting post-trial communications with discharged jurors as a matter of course or routine.’

“By way of background, the TBA’s Petition states: ‘In 1991, this Court issued a well-reasoned opinion acknowledging the utility of post-discharge communications by lawyers with jurors, and the general right of lawyers to undertake such communications in a non-abusive manner. *State v. Thomas*, 813 S.W.2d 395 (Tenn. 1991). In *Thomas*, this Court struck down Davidson County Local Rule 5.04(e) as unenforceable. That local rule of court had provided: ‘Once the jurors’ service is completed all interviews of jurors by counsel, litigants, or their agents, are prohibited except with the permission of the trial court, and then only in such situations as are deemed appropriate.’ *Id.* at 395. The Court explained that the flat prohibition in the local rule was contradicted by the then-existing version of Tennessee’s ethics rules, and on that basis obviated any need to address public policy or constitutional issues. *Id.* at 397.’

“With that background, the TBA’s petition asks the Court to amend Comment [4] to RPC 3.5 ‘to specifically reflect that *State v. Thomas* remains good law in Tennessee.’ The TBA concludes its Petition by setting out its proposed revision of Comment [4].

“On October 10, 2014, the Court filed an order soliciting public comments from judges, lawyers, bar associations, members of the public, and any other interested parties concerning the TBA’s proposed amendment of Comment [4]. The deadline for submitting written comments was Tuesday, December 9, 2014. The Court received only one written comment during the comment period, a comment submitted by the Board of Professional Responsibility (‘BPR’).

“After due consideration of the TBA’s proposed amendment and the BPR’s written comment, the Court hereby adopts the amended Comment [4] set out in the appendix to this order, effective May 1, 2015.”

The amendment to Comment [4] of Tenn. Sup. Ct. R. 8, RPC 3.5 inserted “entered in the case or by a federal court rule” following “a court order” in the second sentence and added the fourth through the seventh sentences.

In its order filed March 6, 2017, the Supreme Court provided: “On July 11, 2016, the Tennessee Bar Association (‘TBA’) filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association’s Model Rules of Professional Conduct that were adopted by the ABA’s House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8.”

“On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016.

The Court received written comments during the comment period from the Board of Professional Responsibility (“BPR”) and the Knoxville Bar Association (“KBA”). The KBA’s written comments stated it approved of the TBA’s petition and the amendments proposed therein. The BPR’s written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR’s comments, noting whether it agreed with each of the BPR’s written comments. The Court thanks the TBA, BPR, and KBA for their input.

“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

Law Reviews. The Lawyer’s Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Waiting for the Jury (George W. Jenkins, III), 20 No. 4 Tenn. B.J. 31 (1984).

Disciplinary Board Opinions. In-house counsel to an affiliated group of companies

performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Lawyers litigating matters wherein presiding judge is the uncle of a law partner. Formal Ethics Opinion 85-F-84 (1/2/85).

The lieutenant governor may not represent claimants in an action for damages against the state. Formal Ethics Opinion 85-F-88 (1/16/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney’s client. Formal Ethics Opinion 85-F-100 (9/30/85).

Propriety of an attorney recommending that a client contract with a lay person on a contingent fee basis. Formal Ethics Opinion 85-F-101 (12/16/85).

The propriety of serving as a county commissioner, voting and making decisions regulating and managing the county’s law enforcement program and also representing criminal defendants prosecuted by county law enforcement officers. Formal Ethics Opinion 86-F-105 (8/4/86).

NOTES TO DECISIONS

ANALYSIS

1. Generally.
2. Conduct Intended to Disrupt A Tribunal.
3. Ex Parte Communications.

1. Generally.

Lawyer interrupted and talked over a federal district judge clearly disrupted the proceeding; that federal district judge and a later court holding a disciplinary action found the lawyer’s conduct intentional, and accordingly the court found the lawyer violated Tenn. Sup. Ct. R. 8, RPC 3.5(e). In re Moncier, 550 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 53546 (E.D. Tenn. Apr. 29, 2008), aff’d, — F.3d —, 2009 FED App. 472N (6th Cir.), 329 Fed. Appx. 636, 2009 U.S. App. LEXIS 15093 (6th Cir. Tenn. 2009).

Decision of a hearing panel of the Board of Professional Responsibility that an attorney’s statements pejorative statements in motions to recuse three appellate judges violated the rule was supported by material and substantial evidence because the in-court statements were not protected by the First Amendment; the objective “reasonable attorney” standard was the appropriate standard to apply in a disciplinary proceeding involving an attorney’s in-court speech. Bd. of Prof’l Responsibility v. Parrish, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

Hearing panel acted arbitrarily and capriciously in finding that a public censure was

warranted because an attorney made pejorative statements in motions to recuse three appellate judges knowingly, not negligently; therefore, ABA Standard for Imposing Lawyer Sanctions 6.12 applied, and the presumptive sanction was suspension, not reprimand. Bd. of Prof’l Responsibility v. Parrish, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

Simply abusing or insulting the court to get rulings in favor of a client cannot ever be endorsed or justified, and it is especially important that attorneys, who play an integral role in the judicial system, respect the line separating tolerable criticism from unacceptable speech; attorneys who cross this line may not avoid punishment by claiming that their misconduct served the greater good or the interests of their clients, as such exceptions would overwhelm the rules. Bailey v. Bd. of Prof’l Responsibility, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

Chancery court improperly substituted its judgment for that of the hearing panel regarding the weight of the evidence because substantial and material evidence supported the hearing panel’s finding that an attorney’s behavior warranted suspension; the proof supported the hearing panel’s finding that the attorney’s conduct caused interference with a legal proceeding and actual or potential injury to the clients or parties, and the length of the suspension was

appropriately tailored to the facts. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

Hearing panel's findings of fact and conclusions of law supported suspension as the presumptive sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions because the attorney failed to disclose material facts to an administrative law judge, and threatened the judge to coerce action favorable to his client, and made disparaging descriptions of the judge and the tribunal; his conduct impeded a resolution, which was prejudicial to the administration of justice. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Board of Professional Responsibility hearing panel's conclusion that an attorney sought to improperly influence an administrative law judge by threatening her was supported by substantial and material evidence because the attorney stated that the judge would become a defendant in a federal lawsuit and subject to a Department of Justice investigation if she set an administrative appeal for hearing; the statements could reasonably be viewed as threats made to secure a certain course of action. *Dunlap v. Bd. of Prof'l Responsibility of the Su-*

preme Court of Tenn., 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

2. Conduct Intended to Disrupt A Tribunal.

Suspension of an attorney from the practice of law for 30 days was appropriate because the attorney engaged in conduct intended to disrupt a tribunal by sending an e-mail to a bankruptcy judge, who had denied the attorney's fee application, calling the judge a bully and clown and demanding that the judge provide a written apology for denying the fee application. *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

3. Ex Parte Communications.

Suspension of an attorney from the practice of law for 30 days was appropriate because the attorney violated the rule against ex parte communications by sending an e-mail to a bankruptcy judge, who had denied the attorney's fee application, calling the judge a bully and clown and demanding that the judge provide a written apology for denying the fee application. *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

Rule 3.6. Trial Publicity. — (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation, and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time, and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the

substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment.

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings involving juveniles, domestic relations, mental disabilities, and perhaps other types of litigation. RPC 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been, involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, par-

ticularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, or witness; or the identity of a witness; or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate substantial undue prejudice created by the statements made by others.

[8] See RPC 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Definitional Cross-References

"Firm" See RPC 1.0(c)

"Knows" See RPC 1.0(f)

"Materially" See RPC 1.0(o)

"Reasonable" See RPC 1.0(h)

"Reasonably should know" See RPC 1.0(j)

"Substantial" See RPC 1.0(l)

Law Reviews. Professional Conduct — *Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C.*: The Code of Professional Responsibility as a Basis for Attorney Liability, 22 Mem. St. U.L. Rev. 169 (1991).

Rule 3.7. Lawyer as Witness. — (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

Comment.

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has a proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has a proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate at trial and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that, where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyer to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party.

Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in RPCs 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so, except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with RPCs 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with RPC 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing

so by RPC 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See RPC 1.7. See RPC 1.0(b) for the definition of "confirmed in writing" and RPC 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by RPC 1.7 or RPC 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by RPC 1.10, unless the client gives informed consent under the conditions stated in RPC 1.7.

Definitional Cross-References

"Firm" See RPC 1.0(c)

"Substantial" See RPC 1.0(l)

Law Reviews. Competency and Impeach-

ment of Witnesses (Leo Bearman, Jr.), 57 Tenn. L. Rev. 89 (1989).

Depositions of Other Lawyers, 81 Tenn. L. Rev. 47 (2013).

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. An attorney shall not accept employment in a contemplated litigation if it is obvious that he ought to be called as a witness in a contested matter. Formal Ethics Opinion 81-F-10 (6/25/81).

It is improper for a partner in a law firm serving as a conservator to be represented in litigation by a member of the firm, if he or a lawyer in the firm will be called as a witness. Formal Ethics Opinion 81-F-19 (9/3/81).

An attorney may represent an associate in litigation involving the private and personal interests of the associate that are unrelated to his professional interests as an attorney. Formal Ethics Opinion 83-F-43 (4/14/83).

Confidentiality of statements by a client to his attorney and revealed to the district attorney and the court and the propriety of continuing to represent the client after the district attorney states an intention to call the attorney to testify. Formal Ethics Opinion 84-F-66 (1/31/84).

NOTES TO DECISIONS

ANALYSIS

1. Applicability.
2. Disqualification Proper.
3. Denial of Disqualification Proper.

1. Applicability.

No issue was raised under this rule by supporting class certification with a statement by a plaintiff's lawyer regarding uncontested and judicially noticeable facts about the proposed class and Tennessee's scheme for revoking driver's licenses for court debt. *Thomas v. Haslam*, — F. Supp. 2d —, 2018 U.S. Dist. LEXIS 60969 (M.D. Tenn. Mar. 26, 2018).

None of the exceptions to the general rule prohibiting an attorney from acting as both an advocate and a necessary witness applied when the trial court allowed the State of Tennessee to call defendant's counsel to testify as a witness against defendant at a forfeiture of counsel hearing while counsel was also ostensibly representing defendant. Accordingly, counsel had a conflict of interest that prohibited counsel's continued representation of defendant, and the trial court erred in denying counsel's motion to withdraw. *State v. Toomes*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 700 (Tenn. Crim. App. Oct. 29, 2020).

2. Disqualification Proper.

Counsel was not licensed to practice law prior to the filing of the suit, thereby establish-

ing that her discussions with plaintiffs prior to her licensure were not subject to the attorney-client privilege; defendants intended to illicit testimony from counsel concerning the main issue at trial, namely when the construction defects were discovered, and the court upheld the disqualification of counsel. *Diemoz v. Huneycutt*, — S.W.3d —, 2020 Tenn. App. LEXIS 204 (Tenn. Ct. App. May 6, 2020).

The claims set forth in defendant's motions to withdraw defendant's guilty pleas and during the hearing on the motions concerned defense counsels' advice to defendant and counsels' actions regarding their verification or failure to verify defendant's eligibility for diversion prior to defendant's entering the pleas. These claims rendered counsel necessary witnesses in the hearing on the motions and prohibited the continued representation of defendant by counsel. *State v. Ruben*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 116 (Tenn. Crim. App. Feb. 19, 2020).

3. Denial of Disqualification Proper.

Trial court did not abuse its discretion in denying defendant's motion to disqualify an assistant district attorney prosecuting his case after she testified at a sentencing hearing for codefendant, as she was not a necessary witness in defendant's retrial and there was no violation of this rule. *State v. Swift*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 195 (Tenn. Crim. App. Mar. 28, 2019).

Rule did not mandate exclusion of a borrower's counsel because the case was decided on summary judgment, rather than "at trial," as required by the clear language of the rule; a bank did not point to a place in the record wherein it sought exclusion of the borrower's counsel or offer any argument or caselaw to

support exclusion of evidence based on the rule, and different counsel represented the borrower at oral argument in the court of appeals. *Bank of N.Y. Mellon v. Chamberlain*, — S.W.3d —, 2020 Tenn. App. LEXIS 50 (Tenn. Ct. App. Feb. 5, 2020).

Rule 3.8. Special Responsibilities of a Prosecutor. — The prosecutor in a criminal case:

(a) shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) shall make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) shall not advise an unrepresented accused to waive important pretrial rights;

(d) shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) shall not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent employees of the prosecutor's office from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule; and discourage investigators, law enforcement personnel, and other persons assisting or associated with the prosecutor in a criminal matter from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule.

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to an appropriate authority, or

(2) if the conviction was obtained in the prosecutor's jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the

defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Comment.

[1] A prosecutor has the responsibility of a minister of justice whose duty is to seek justice rather than merely to advocate for the State's victory at any given cost. *See State v. Superior Oil, Inc.*, 875 S.W.2d 658, 661 (Tenn. 1994). For example, prosecutors are expected "to be impartial in the sense that charging decisions should be based upon the evidence, without discrimination or bias for or against any groups or individuals. Yet, at the same time, they are expected to prosecute criminal offenses with zeal and vigor within the bounds of the law and professional conduct." *State v. Culbreath*, 30 S.W.3d 309, 314 (Tenn. 2000). A knowing disregard of obligations or a systematic abuse of prosecutorial discretion could constitute a violation of RPC 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not advise an unrepresented accused to waive the right to a preliminary hearing or other important pretrial rights. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements RPC 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the state-

ments which a prosecutor may make which comply with RPC 3.6(b) or 3.6(c). Paragraph (f) is only intended to apply prior to the conclusion of a proceeding. A proceeding has concluded when a final judgment in the proceeding has been affirmed on appeal or the time for appeal has passed.

[6] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person was convicted outside the prosecutor's jurisdiction of a crime that the person did not commit, paragraph (g) requires prompt disclosure to an appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or to make reasonable efforts to cause another appropriate authority to undertake the necessary investigation.

[7] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[8] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Definitional Cross-References

"Known" and "knows" *See* RPC 1.0(f)

"Material" *See* RPC 1.0(o)

"Reasonable" *See* RPC 1.0(h)

"Reasonably believes" *See* RPC 1.0(i)

"Substantial" *See* RPC 1.0(l)

"Tribunal" *See* RPC 1.0(m)

Law Reviews. Prosecutorial Vindictiveness: An Examination of Divergent Lower Court Standards and a Proposed Framework For Analysis, 34 Vand. L. Rev. 431.

Disciplinary Board Opinions. The propriety of representing a will beneficiary to uphold the validity of the will on the issue of testamentary capacity after having witnessed the execu-

tion of the will. Formal Ethics Opinion 83-F-54 (8/29/83).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

Potential ethical conflicts and ethical responsibilities of attorneys employed in programs administered by Department of Human Services pursuant to Title IV-D of the Federal Social Security Act. Formal Ethics Opinion 90-F-123 (9/14/90).

NOTES TO DECISIONS

1. Prosecutor's Duty to Disclose.

Because Tenn. Sup. Ct. R. Prof. Conduct 8, 3.8(d), was already interpreted as coextensive in scope with the Brady rule and its progeny, the Supreme Court of Tennessee declined to interpret timely as any other definition than what was required constitutionally as a timely disclosure. In re Petition to Stay the Effectiveness of Ethics Opinion 2017-F-163, 582 S.W.3d 200, 2019 Tenn. LEXIS 372 (Tenn. Aug. 23, 2019).

Supreme Court of Tennessee declines to in-

terpret a prosecutor's ethical duty under Tenn. Sup. Ct. R. Prof. Conduct 8, 3.8(d), as being more expansive than one's legal obligations under Brady v. Maryland, 10 L. Ed. 2d 215, 83 S. Ct. 1194, 373 U.S. 83, 1963 U.S. LEXIS 1615 (1963), and its progeny, or that timely disclosure of the material should be interpreted as soon as reasonably practicable. In re Petition to Stay the Effectiveness of Ethics Opinion 2017-F-163, 582 S.W.3d 200, 2019 Tenn. LEXIS 372 (Tenn. Aug. 23, 2019).

Rule 3.9. Advocate in Non-Adjudicative Proceedings. — A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of RPC 3.3(a)(1), (a)(2), (b), (c), and (d); RPC 3.4(a), (b), and (c); RPC 3.5(a), (b), and (e); and RPC 4.1.

Comment.

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with the applicable rules of procedure. See RPCs 3.3(a)-(c), 3.4(a)-(c), and 3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with a proceeding of a governmental agency or a legisla-

tive body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by RPCs 4.1 through 4.4.

Definitional Cross-References

None.

Law Reviews. The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

Disciplinary Board Opinions. Divorce mediation, standards of practice, who may practice. Formal Ethics Opinion 90-F-124 (12/14/90).

CHAPTER 4

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others. — (a) In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

(b) If, in the course of representing a client in a nonadjudicative matter, a lawyer knows that the client intends to perpetrate a crime or fraud, the lawyer shall promptly advise the client to refrain from doing so and shall discuss with the client the consequences of the client's conduct. If after such discussion, the lawyer knows that the client still intends to engage in the wrongful conduct, the lawyer shall:

(1) withdraw from the representation of the client in the matter; and

(2) give notice of the withdrawal to any person who the lawyer knows is aware of the lawyer's representation of the client in the matter and whose financial or property interests are likely to be injured by the client's criminal or fraudulent conduct. The lawyer shall also give notice to any such person of the lawyer's disaffirmance of any written statements, opinions, or other material prepared by the lawyer on behalf of the client and which the lawyer reasonably believes may be used by the client in furtherance of the crime or fraud.

(c) If a lawyer who is representing or has represented a client in a nonadjudicative matter comes to know, prior to the conclusion of the matter, that the client has, during the course of the lawyer's representation of the client, perpetrated a crime or fraud, the lawyer shall promptly advise the client to rectify the crime or fraud and discuss with the client the consequences of the client's failure to do so. If the client refuses or is unable to rectify the crime or fraud, the lawyer shall:

(1) if currently representing the client in the matter, withdraw from the representation and give notice of the withdrawal to any person whom the lawyer knows is aware of the lawyer's representation of the client in the matter and whose financial or property interests are likely to be injured by the client's criminal or fraudulent conduct; and

(2) give notice to any such person of the lawyer's disaffirmance of any written statements, opinions, or other material prepared by the lawyer on behalf of the client and that the lawyer reasonably believes may be used by the client in furtherance of the crime or fraud.

Comment.**Misrepresentation**

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts or law. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see RPC 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, as is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Paragraphs (b) and (c) provide guidance for lawyers who discover that a client intends to or is engaging in criminal or fraudulent conduct, and in some cases may even have used the lawyer's services to assist them commit the crime or fraud. To avoid assisting the client with the crime or fraud, the lawyer must advise the client to refrain from or to rectify the consequences of the criminal or fraudulent act. If the client refuses or is unable to do so, the lawyer must withdraw from the representation of the client in the matter. Additionally, this Rule mandates limited disclosures – notice of withdrawal or disaffirmance of written work product – in circumstances in which such disclosure is necessary for the lawyer to prevent the client from using the lawyer's services in furtherance of the crime or fraud. To this limited extent, then, this Rule overrides the lawyer's duties in RPCs 1.6, 1.8(b), and 1.9(c) prohibiting disclosure or use to the disadvantage of the client of information relating to the representation. Other than the disclosure mandated by this Rule, however, the lawyer must not reveal information relating to the representation unless permitted to do so by RPC 1.6.

[4] If a lawyer learns that a client intends to commit a crime or fraud under circumstances in which the lawyer will not assist the offense by remaining silent, paragraph (b) requires remonstrance with the client against the crime or fraud and requires withdrawal if the client does not desist from the course of conduct in question. Although the lawyer is not required to reveal the client's intended or ongoing fraud, the lawyer is required to communicate the fact that he or she has withdrawn from the representation of the client to any person who the lawyer reasonably believes knows of the lawyer's involvement in the matter and whose financial or property interests are likely to be damaged by the client's intended or ongoing misconduct. This communication is necessary to fully distance the lawyer from the client's misconduct. If the client's intended conduct is a crime, full disclosure of the crime is permitted by RPC 1.6(b), but such disclosure is not required by paragraph (b) of this Rule.

[5] In some cases, a lawyer will learn about a client's crime or fraud after he or she has innocently prepared and submitted statements, opinions, or other materials to third parties who will be adversely affected if the client persists with his or her misconduct. If the lawyer was misled by the client, some of these statements, opinions or materials may be false or misleading. Even though accurate, they may be necessary for the accomplishment of the client's crime or fraud. This presents the lawyer with a dilemma. Without the consent of the client, the lawyer may not correct the statements, opinions, or materials. That would violate the prohibition against revealing informa-

tion related to the representation of the client. Yet to do nothing would allow the client to use the lawyer's work in the client's ongoing effort to consummate the fraud. To resolve this dilemma, paragraphs (b) and (c) do not require disclosure of the crime or fraud but only require that the lawyer effectively disengage from the crime or fraud by giving notice to affected persons of the lawyer's disaffirmance of the lawyer's work product that the lawyer reasonably believes may be used by the client in furtherance of the crime or fraud. See RPC 1.6(b)(1) and (2) for the circumstances in which the lawyer is permitted to reveal information for the purposes of preventing the client's crime or fraud, and RPC 1.6(b)(3) for the circumstances in which a lawyer may reveal a client's crime or fraud for the purpose of preventing, rectifying or mitigating its consequences. See RPC 1.6(c)(1) for the circumstances in which the lawyer is required to reveal information for the purpose of preventing reasonably certain death or substantial bodily harm.

[6] This Rule does not apply if the lawyer learns of the client's crime or fraud after the lawyer's representation in the matter is concluded. In such circumstances, the lawyer must comply with RPCs 1.6, 1.8(b), and 1.9(c) and may not make any disclosures concerning the client's crime or fraud, unless permitted or required to do so by those Rules. *See, e.g.*, RPC 1.6(b)(3) (permitting disclosure to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services); RPC 1.6(b)(4) (permitting disclosures to secure legal advice about compliance with these Rules); RPC 1.6(b)(5) (permitting disclosures to establish a defense to an allegation of misconduct); and RPC 1.6(c)(1) (requiring disclosure to prevent reasonably certain death or substantial bodily harm).

Definitional Cross-References

"Fraud" and "fraudulent" *See* RPC 1.0(d)

"Knowingly" and "knows" *See* RPC 1.0(f)

"Material" *See* RPC 1.0(o)

"Reasonably believes" *See* RPC 1.0(i)

Law Reviews. Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 Vand. L. Rev. 1387 (1986).

Deposition Tactics and Ethics (Donald F. Paine), 25 No. 3 Tenn. B.J. 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 No. 6 Tenn. B.J. 35 (1989).

Mary Carter Agreements, Learn the Inside Deal (June F. Entman), 24 No. 1 Tenn. B.J. 10 (1988).

Disciplinary Board Opinions. It is improper for an attorney to divide his fee with his client. Formal Ethics Opinion 81-F-6 (5/12/81).

Any communication by an attorney with an adverse party by subterfuge without the knowledge and consent of the adverse party is prohibited. Formal Ethics Opinion 85-F-89 (3/13/85).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the law-

yer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

Rule 4.2. Communication with a Person Represented by Counsel.

— In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment.

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter, such as additional or different unlawful conduct not within the subject matter of the representation. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See RPC 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications with represented persons may be authorized by specific constitutional or statutory provisions, by rules governing the conduct of proceedings, by applicable judicial precedent, or by court order. Communications authorized by law, for example, may

include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with a governmental official having the power to redress the client's grievances. By virtue of its exemption of communications authorized by law, this Rule permits a prosecutor or a government lawyer engaged in a criminal or civil law enforcement investigation to communicate with or direct investigative agents to communicate with a represented person prior to the represented person being arrested, indicted, charged, or named as a defendant in a criminal or civil law enforcement proceeding against the represented person. A civil law enforcement investigation is one conducted under the government's police or regulatory power to enforce the law. Once a represented person has been arrested, indicted, charged, or named as a defendant in a criminal or civil law enforcement proceeding, however, prosecutors and government lawyers must comply with this Rule. A represented person's waiver of the constitutional right to counsel does not exempt the prosecutor from the duty to comply with this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications by a lawyer for another person or entity concerning the matter in representation with a member of the governing board, an officer or managerial agent or employee, or an agent or employee who supervises or directs the organization's lawyer concerning the matter, has authority to contractually obligate the organization with respect to the matter, or otherwise participates substantially in the determination of the organization's position in the matter. If an agent or employee of an organization is represented in the matter by his or her own counsel, consent by that counsel will be sufficient for purposes of this Rule. Consent of the organization's lawyer is not required for communication with a former agent or employee. See RPC 4.4 (regarding

the lawyer's duty not to violate the organization's legal rights by inquiring about information protected by the organization's attorney-client privilege or as work-product of the organization's lawyer). In communicating with a current or former agent or employee of an organization, a lawyer shall not solicit or assist in the breach of any duty of confidentiality owed by the agent to the organization. *See* RPC 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but such actual knowledge may be inferred from the circumstances. *See* RPC 1.0(f).

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to RPC 4.3.

Definitional Cross-Reference

"Knows" *See* RPC 1.0(f)

Law Reviews. The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part I) (Carl A. Pierce), 70 Tenn. L. Rev. 121 (2002).

Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part II) (Carl A. Pierce), 70 Tenn. L. Rev. 321 (2003).

Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part III) (Carl A. Pierce), 70 Tenn. L. Rev. 643 (2003).

Disciplinary Board Opinions. It is improper for an attorney to assist parties in

obtaining a divorce by collusion. Formal Ethics Opinion 81-F-21 (10/1/81).

It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

The prohibition against an attorney communicating with an adverse party whom he knows to be represented by a lawyer does not apply to communications with an employee of the state, where the state alone is the other party to the controversy. Formal Ethics Opinion 82-F-27 (2/22/82).

Need of attorney to identify self and reason for interviewing of witness. Formal Ethics Opinion 83-F-46 (4/14/83); Formal Ethics Opinion 83-F-46(a) (3/13/84); Formal Ethics Opinion 83-F-46(b) (4/29/85).

Defense counsel interviewing plaintiff's non-defendant treating physician concerning the medical care and treatment given to the plaintiff. Formal Ethics Opinion 85-F-86 (1/14/85).

Any communication by an attorney with an adverse party by subterfuge without the knowledge and consent of the adverse party is prohibited. Formal Ethics Opinion 85-F-89 (3/13/85).

A state prosecutor is ethically obliged to avoid any and all communication with defendants without the knowledge and consent of the defendant's attorney. Formal Ethics Opinion 87-F-112 (9/28/87).

Ethical propriety of filing petitions for contempt and attachment against individuals previously represented by counsel without first notifying the individuals' attorneys of record of the intent to do so. Formal Ethics Opinion 88-F-116 (12/15/88).

NOTES TO DECISIONS

1. Communicating with One of Adverse Interest.

Attorney was immune under the litigation privilege because he was acting in the capacity of counsel for his client, was acting in good faith for the benefit of his client and not for his own self-interest, the conduct was related to the subject matter of the contemplated litigation,

and there was a real nexus between his conduct and the contemplated litigation; however, an attorney's immunity from civil liability does not preclude other consequences, such as sanctions from the Board of Professional Responsibility. *Unarco Material Handling, Inc. v. Liberato*, 317 S.W.3d 227, 2010 Tenn. App. LEXIS 161 (Tenn. Ct. App. Mar. 2, 2010).

Rule 4.3. Dealing with an Unrepresented Person. — In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are, or have a reasonable possibility of being, in conflict with the interests of the client.

Comment.

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see RPC 1.13(d).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature, and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Definitional Cross-References

"Knows" See RPC 1.0(f)

"Reasonable" See RPC 1.0(h)

"Reasonably should know" See RPC 1.0(j)

Disciplinary Board Opinions. It is improper for an attorney to assist parties in obtaining a divorce by collusion. Formal Ethics Opinion 81-F-21 (10/1/81).

It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

The prohibition against an attorney communicating with an adverse party whom he knows to be represented by a lawyer does not apply to communications with an employee of the state, where the state alone is the other party to the controversy. Formal Ethics Opinion 82-F-27 (2/22/82).

Need of attorney to identify self and reason for interviewing of witness. Formal Ethics Opinion 83-F-46 (4/14/83); Formal Ethics Opinion 83-F-46(a) (3/13/84); Formal Ethics Opinion 83-F-46(b) (4/29/85).

Defense counsel interviewing plaintiff's non-defendant treating physician concerning the medical care and treatment given to the plaintiff. Formal Ethics Opinion 85-F-86 (1/14/85).

Any communication by an attorney with an adverse party by subterfuge without the knowledge and consent of the adverse party is prohibited. Formal Ethics Opinion 85-F-89 (3/13/85).

A state prosecutor is ethically obliged to avoid any and all communication with defendants without the knowledge and consent of the defendant's attorney. Formal Ethics Opinion 87-F-112 (9/28/87).

Rule 4.4. Respect for the Rights of Third Persons. — (a) In representing a client, a lawyer shall not:

(1) use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person; or

(2) threaten to present a criminal or lawyer disciplinary charge for the purpose of obtaining an advantage in a civil matter.

(b) A lawyer who receives information (including, but not limited to, a document or electronically stored information) relating to the representation of the lawyer's client that the lawyer knows or reasonably should know is protected by RPC 1.6 (including information protected by the attorney-client privilege or the work-product rule) and has been disclosed to the lawyer inadvertently or by a person not authorized to disclose such a document or electronically stored information to the lawyer, shall:

(1) immediately terminate review or use of the information;

(2) notify the person, or the person's lawyer if communication with the person is prohibited by RPC 4.2, of the inadvertent or unauthorized disclosure; and

(3) abide by that person's or lawyer's instructions with respect to disposition of written information or refrain from using the written information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship. For example, a lawyer may not secretly record a conversation or the activities of another person if doing so would violate state or federal law specifically prohibiting such recording. Otherwise, this Rule does not prohibit secret recording so long as the lawyer has a substantial purpose other than to embarrass or burden the persons being recorded. It would be a violation of RPC 4.1 or RPC 8.4(c), however, if the lawyer stated falsely or affirmatively misled another to believe that a conversation or an activity was not being recorded. By itself, however, secret taping does not violate either RPC 8.4(c) (prohibition against dishonest or deceitful conduct) or RPC 8.4(d) (prohibition against conduct prejudicial to the administration of justice.)

[2] The duties imposed by paragraph (b) on lawyers who know or who reasonably should know that they have received information protected by RPC 1.6 that was disclosed to them inadvertently or by a person not authorized to disclose the information to them reflect the importance of client-lawyer confidentiality in the jurisprudence of this state and the judgment that lawyers in their dealings with other lawyers and their clients should take the steps that are required by this Rule in the interest of protecting client-lawyer confidentiality even if it would be to the advantage of their clients to do otherwise. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, email, and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form.

[3] This Rule, however, does not prohibit the receiving lawyer from seeking a definitive court ruling as to the proper disposition of such information, including a ruling regarding whether the disclosure effects a waiver of the attorney-client privilege or work-product rule. In making any disclosure to a court to obtain a ruling regarding disposition of the information, any disclosure of the information should be

made in a manner that limits access to the information to the tribunal, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Definitional Cross-References

"Knows" and "knowingly" See RPC 1.0(f)

"Reasonably should know" See RPC 1.0(j)

"Substantial" See RPC 1.0(l)

"Written" See RPC 1.0(n)

Compiler's Notes. In its order filed August 18, 2016, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposes to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012; those proposed amendments to Rule 8 are set out in Exhibit A to the Petition. In addition, the TBA also proposes a number of housekeeping amendments to Rule 8 to update certain cross-references to other provisions that have changed, such as the numbering of sections within Tenn. Sup. Ct. R. 9, and similar issues; those proposed housekeeping amendments are set out in Exhibit B to the TBA's Petition. A copy of the TBA's petition (including Exhibits A and B) is attached as the Appendix to this order."

"The Court hereby solicits written comments regarding the TBA's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Thursday, November 17, 2016. Written comments should be addressed to: James Hivner, Clerk, Re: Tenn. Sup. Ct. R. 8, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407 and should reference the docket number set out above [No. ADM2016-01382]."

In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Attorneys' Liability for Errors of Judgment — At the Crossroads (Ronald E. Mallen and David W. Evans), 48 Tenn. L. Rev. 283.

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

The Theoretical Foundations of the Proposed Tennessee Rules of Appellate Procedure, III. Some Noteworthy Features of the Rules (John L. Sobieski, Jr.), 45 Tenn. L. Rev. 180.

Waiting for the Jury (George W. Jenkins, III), 20 No. 4 Tenn. B.J. 31 (1984).

Disciplinary Board Opinions. It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse

party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

Defense counsel interviewing plaintiff's non-defendant treating physician concerning the medical care and treatment given to the plaintiff. Formal Ethics Opinion 85-F-86 (1/14/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

The attorney's retention of clients' documents in an effort to enforce resolution of a fee dispute between the attorney and client. Formal Ethics Opinion 86-F-106 (9/26/86).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

Potential ethical conflicts and ethical responsibilities of attorneys employed in programs administered by Department of Human Services pursuant to Title IV-D of the Federal Social Security Act. Formal Ethics Opinion 90-F-123 (9/14/90).

The ethical/fiduciary responsibilities relating to retainer fees, advanced fees, advanced costs and expenses, flat fees, pre-paid fees, and non-refundable retainer fees. Formal Ethics Opinion 92-F-128 (1992).

Duties of defense counsel where capital defendant instructs counsel not to investigate or present mitigating evidence. Formal Ethics Opinion 84-F-73(a) (3/16/99).

NOTES TO DECISIONS

ANALYSIS

1. Appropriate Sanction.
2. Violation.

1. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless

checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

2. Violation.

E-mails an attorney sent to clients' new lawyer violated the rule because the attorney ultimately admitted that she in fact sent the e-mails, which threatened legal action and criminal charges against the clients if they did not accede to the attorney's demand that they dismiss a lawsuit to obtain withheld items; proof that the lawyer received the threatening e-mails was not required. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

CHAPTER 5

LAW FIRMS, LEGAL DEPARTMENTS, AND LEGAL SERVICE ORGANIZATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers. — (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment.

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. *See* RPC 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm,

or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* RPC 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members, and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. *See also* RPC 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the

misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in a negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension. This duty is in addition to the lawyer's RPC 8.3(a) duty to report professional misconduct to the Office of Disciplinary Counsel. The obligation to take reasonable remedial action, however, does not require the lawyer to take any action that would violate these Rules, *e.g.*, disclosing information related to the representation of a client in violation of RPC 1.6. Nor does the duty to mitigate harm require the lawyer to compensate a person for losses suffered by virtue of the misconduct the lawyer knows has occurred.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and RPC 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules. This Rule is only intended to provide a basis for professional discipline and is not intended to alter the legal rights and responsibilities of partners or supervisory lawyers with respect to the conduct of other lawyers with whom they are associated.

[8] The duties imposed on managing and supervising lawyers by this Rule do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct.

Definitional Cross-References

"Firm" and "law firm" *See* RPC 1.0(c)

"Knows" *See* RPC 1.0(f)

"Partner" *See* RPC 1.0(g)

"Reasonable" *See* RPC 1.0(h)

Cross-References. Improper testimony by attorney, T.C.A. §§ 23-3-105 — 23-3-107.

Law Reviews. Client Perjury in Tennessee: A Misguided Ethics Opinion, An Amended Rule, And A Call for Further Action by The Tennessee Supreme Court (Ernest F. Lidge), 63 Tenn. L. Rev. 1 (1995).

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

The Ripple Effect: Huge salary hikes for associates are making their way to Tennessee (David A. Fox), 36 No. 7 Tenn. B.J. 1 (2000).

Disciplinary Board Opinions. Duty to report ethics violations discovered while attempting to help attorneys with alcohol or drug problems. Formal Ethics Opinions 83-F-48 (5/23/83); Formal Ethics Opinion 87-F-4-8(a) (6/10/87).

There is no confidential relationship between attorneys when one is called upon to take over the files of another attorney. Formal Ethics Opinion 83-F-51 (8/12/83).

Prejudice to client by reporting ethics violation. Formal Ethics Opinion 84-F-69 (4/12/84).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

Fee arbitration committee members of the various bar associations are excused from their ethical obligation to report ethical misconduct discovered during the course of their service as a fee arbitration committee member. Formal Ethics Opinion 89-F-119 (8/11/89).

A privilege of not requiring disclosure of confidences and secrets is afforded to lawyers participating in Colleague Programs sponsored by local bar associations to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege. Formal Ethics Opinion 91-F-126 (9/13/91).

Rule 5.2. Responsibilities of a Subordinate Lawyer. — (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment.

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining

whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a profes-

sional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear, and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the

subordinate lawyer's supervisor, in another lawyer who has primary responsibility for the representation, or in a lawyer who has authority to resolve such matters on behalf of the firm, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under RPC 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Definitional Cross-Reference
 "Reasonable" See RPC 1.0(h)

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance. — With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Amended by order filed March 6, 2017, effective upon filing.

Comment.

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to RPC 1.1 (retaining lawyers outside the firm) and Comment [1] to RPC 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investiga-

tors, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and

using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience, and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. *See also* RPCs 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. *See* RPC 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Definitional Cross-References

"Firm" and "law firm" *See* RPC 1.0(c)

"Knows" *See* RPC 1.0(f)

"Partner" *See* RPC 1.0(g)

"Reasonable" *See* RPC 1.0(h)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville

Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

Disciplinary Board Opinions. A legal services law office shall not give information about a client to an agency funding the law office. Formal Ethics Opinion 82-F-25 (2/22/82).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

A lay employee is prohibited from appearing at docket calls on behalf of the attorney. Formal Ethics Opinion 85-F-94 (5/6/85).

There is no impropriety in a law firm leasing non-lawyer staff personnel from a third party lessor/employer. Formal Ethics Opinion 85-F-99 (9/12/85).

The propriety of representing litigants upon employment of a paralegal who had duties involving opposing parties while formerly employed by adverse counsel. Formal Ethics Opinion 87-F-110 (6/10/87).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

NOTES TO DECISIONS

1. Suspension Proper.

Forty-five-day suspension of a lawyer's license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer's attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof'l Responsibility* of the Supreme Court of Tenn., 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

Debtors' attorney violated a number of the Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed

about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a suspension from practice before the court was appropriate. *In re Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

Rule 5.4. Professional Independence of a Lawyer. — (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of RPC 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) a lawyer may share a court-awarded fee with a client represented in the matter or with a non-profit organization that employed, retained, or recommended employment of the lawyer in the matter;

(5) a lawyer who is a full-time employee of a client may share a legal fee with the client to the extent necessary to reimburse the client for the actual cost to the client of permitting the lawyer to represent another client while continuing in the full-time employ of the client with whom the fee will be shared; and

(6) a lawyer may pay to a registered non-profit intermediary organization a referral fee calculated by reference to a reasonable percentage of the fee paid to the lawyer by the client referred to the lawyer by the intermediary organization.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation, or other association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or ownership interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a

corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment.

[1] The provisions of this Rule express traditional limitations on sharing fees with and the co-ownership of law practices by nonlawyers. These limitations are to protect the lawyer's independence of professional judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. *See also* RPC 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Definitional Cross-References

"Firm" and "law firm" *See* RPC 1.0(c)

"Partner" *See* RPC 1.0(g)

"Reasonable" *See* RPC 1.0(h)

Law Reviews. Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinions, 21 No. 2 Tenn. B.J. 23 (1985).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennen), 25 No. 3 Tenn. B.J. 24 (1989).

Ethics — Board of Professional Responsibility Formal Ethics Opinion Number 99-F-143: Is There a Realistic Approach to the Tripartite Relationship That Exists Between an Insured, the Insurer, and an Attorney Under a Viable Code of Professional Conduct?, 31 U. Mem. L. Rev. 521 (2001).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

Disciplinary Board Opinions. Plaintiff's attorney accepting an offer of settlement from a defendant's insurance career. Formal Ethics Opinion 80-F-1 (9/5/80); Formal Ethics Opinion 80-F-1 Supp (4/16/81).

The propriety of an attorney participating in a trade exchange association or barter group wherein a fee or membership charge is made by the association or group on each transaction. Formal Ethics Opinion 80-E-3 (10/6/80); Formal Ethics Opinion 80-E-3(a) (4/12/84).

Conflicts of interest while serving as agent for title insurance company. Formal Ethics Opinion 80-F-2 (10/28/80).

It is improper for a county attorney to counsel the county in preparation of the county budget and also represent the sheriff or deputy sheriffs to increase their budget or salaries. Formal Ethics Opinion 83-F-53 (8/12/83).

A partner or associate of the city attorney is prohibited from representing criminal defendants prosecuted by the city police department. Formal Ethics Opinion 83-F-57 (10/24/83).

Judge of the county juvenile court representing the county school board in an action against the county commission. Formal Ethics Opinion 83-F-58 (11/4/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is a conflict of interest for a county attorney in his private capacity to represent a client before county officials and agencies of that county. Formal Ethics Opinion 81-F-4 (1/14/81).

It is improper for an attorney to divide his fee with his client. Formal Ethics Opinion 81-F-6 (5/12/81).

In a county that does not have a regular county attorney, it is permissible for an attorney to represent the county beer board and members of his firm to represent individual clients before other county boards. Formal Ethics Opinion 81-F-11 (7/10/81).

Conflict of interest of court appointed attorneys. Formal Ethics Opinion 81-F-12 (7/10/81); Formal Ethics Opinion 81-F-12(a) (8/12/81).

A firm engaging in the general practice of law, not on retainer to a city nor the municipal attorney, may represent entities before various entities of a city and do trial work on a case-by-case basis for a city. Formal Ethics Opinion 81-F-13 (7/10/81).

An attorney may represent both parties in an irreconcilable differences divorce. Formal Ethics Opinion 81-F-16 (8/26/81).

A legal services law office shall not give information about a client to an agency funding the law office. Formal Ethics Opinion 82-F-25 (2/22/82).

It is improper for an attorney to remit excess funds accumulated from interest on attorney's fees to clients. Formal Ethics Opinion 82-F-30 (6/18/82).

An attorney is prohibited from representing a plaintiff while his associate serves as registered agent for service of process for the defendant. Formal Ethics Opinion 82-F-38 (12/16/82).

A non-practicing lawyer may not engage with a non-lawyer in the business of offering divorce mediation services to the public. Formal Ethics Opinion 83-F-39 (1/25/83).

In-house corporate counsel may not perform legal services for corporate customers. Formal Ethics Opinion 83-F-44 (4/13/83); Formal Ethics Opinion 83-F-44(a) (1/17/84).

A partner or associate of the county attorney is prohibited from representing criminal defendants prosecuted by the county sheriff. Formal Ethics Opinion 83-F-41 (4/14/83).

The propriety of employing a suspended attorney in a non-legal capacity and the propriety of dividing an attorney's fee with a suspended attorney. Formal Ethics Opinion 83-F-50 (8/12/83).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

Existence of attorney-client relationship between a district attorney who provides child support enforcement services and the recipient of a public assistance grant. Formal Ethics Opinion 83-F-55 (8/24/83).

Conflict of interest to represent a sheriff for alleged civil rights action and represent criminal defendants where sheriff is material witness. Formal Ethics Opinion 83-F-56 (9/22/83).

A county attorney may simultaneously represent the county and an industrial development corporation created by the county. Formal Ethics Opinion 84-F-59 (1/18/84).

A county attorney may represent a defendant when a law enforcement officer of the county is the prosecutor, only if the attorney is precluded from representing law enforcement officers. Formal Ethics Opinion 84-F-60 (1/18/84).

It is improper for an attorney to share his legal fees with the communal religious order to which he belongs. Formal Ethics Opinion 84-F-62 (1/18/84).

FDIC salaried staff attorney is prohibited from requesting reimbursement from third party debtors, pursuant to the terms of a promissory note, for legal services expended in the collection of the notes owned and held by FDIC. Formal Ethics Opinion 84-F-67 (3/13/84).

The propriety of leasing law office space from a client in a building the client occupies and sharing the use of a common reception room and receptionist/typist with the client. Formal Ethics Opinion 84-F-70 (4/12/84).

There is no impropriety in an attorney-employee of a corporation counseling, representing or appearing on behalf of the corporation in

the conduct of its affairs, either in or out of court. Formal Ethics Opinion 84-F-74 (6/13/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

In-house counsel to an affiliated group of companies performing legal services for certain affiliates and allowing the corporation that directly employs him to bill the affiliates for the legal services performed by him. Formal Ethics Opinion 84-F-80 (10/17/84).

An attorney arranging to assist a collection agency in collection of delinquent accounts in a manner where the creditor has no contact with the attorney. Formal Ethics Opinion 84-F-81 (10/17/84); Formal Ethics Opinion 85-F-81(a) (3/4/85).

Structured settlements. Formal Ethics Opinion 85-F-96 (5/31/85).

When an insurer retains an attorney to represent an insured, the insured is the attorney's client. Formal Ethics Opinion 85-F-100 (9/30/85).

Propriety of an attorney recommending that a client contract with a lay person on a contingent fee basis. Formal Ethics Opinion 85-F-101 (12/16/85).

The propriety of participating in prepaid legal service plans. Formal Ethics Opinion 85-F-102 (12/16/85).

The ethical consequences of settlement negotiations which include provisions relating to attorney's fees. Formal Ethics Opinions 85-F-96 (a) (9/26/86).

The propriety of representing litigants upon employment of a paralegal who had duties involving opposing parties while formerly employed by adverse counsel. Formal Ethics Opinion 87-F-110 (6/10/87).

Board of Professional Responsibility's agreement with PITLA, U.S.A., Inc., a lawyer referral service, enabling PITLA's lawyer-members to ethically participate as a cooperative advertising venture. Formal Ethics Opinion 90-F-122(a) (10/23/90).

In all cases in which an award of reasonable attorney's fees to the state is appropriate, it is ethical for the attorney general to request and receive attorney's fees based on prevailing market rates, unrelated to a cost-based standard. Formal Ethics Opinion 91-F-125 (3/18/91).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

Attorneys are not allowed to include confidential information in billing and file reviews by auditing firms. Neither are they allowed to enter into any agreement to represent an insured whereby the insurance company has the power to direct the manner of the attorney's

representation through any sort of directive. Formal Ethics Opinion 99-F-143 (6/14/99).

Client consent necessary for any disclosure to client's insurer's auditors, and an attorney cannot bypass the requirement by unilaterally

redacting file information or by sending information to the insurer rather than directly to auditors. Formal Ethics Opinion 99-F-143(a) (9/10/99).

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law. — (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

(3) A lawyer providing legal services pursuant to paragraph (d)(1) is subject to registration pursuant to Tenn. Sup. Ct. R. 7, § 10.01, and may be subject to other requirements, including assessments for client protection funds and mandatory continuing legal education. Failure to register in a timely manner may preclude the lawyer from later seeking admission in this jurisdiction.

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal

services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.

(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.

(g) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(h) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. [Amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; and amended by order filed March 6, 2017, effective upon filing.]

Comment.

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* RPC 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice

generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. *See also* RPCs 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United

States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to

perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. Lawyers desiring to provide *pro bono* legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Tenn. Sup. Ct. R. 47.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] [Effective January 1, 2016, RPC 5.5 was amended by moving the substance of former Comment [17] to new RPC 5.5(d)(3) (above).]

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. *See, e.g.,* Tenn. Sup. Ct. R. 7, § 5.01(g) (Practice Pending Admission by Applicant Licensed in Another Jurisdiction).

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. *See* RPC 8.5(a). Additionally, under paragraph (g), a lawyer providing legal services in Tennessee pursuant to paragraphs (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

[20] Paragraph (f) requires a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) to inform the client that the lawyer is not licensed to practice law in this jurisdiction. *See also* RPC 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by RPCs 7.1 to 7.5.

[22] Paragraph (h) provides that a lawyer or law firm may not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. That paragraph is consistent with existing Tennessee law. *See* Formal Ethics Opinion 83-F-50; Tenn. Sup. Ct. R. 9, § 28.8 (providing, "[b]y no later than twenty days after the effective date of the order [imposing disbarment, suspension or transfer to disability inactive status], the respondent attorney shall

cease to maintain a presence or occupy an office where the practice of law is conducted, except as provided in Section 12.3(c)").

(Amended by order filed August 18, 2014, effective upon filing.)

Definitional Cross-References

"Informed consent" *See* RPC 1.0(e)

"Reasonably" *See* RPC 1.0(h)

"Tribunal" *See* RPC 1.0(m)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Cross-References. Unauthorized practice, T.C.A. §§ 23-3-101 — 23-3-104, 23-3-108.

Law Reviews. Beyond Borders: Can the legal system's jurisdictional structure adjust to the new economy's borderless behavior? (Barry Kolar), 38 No. 1 Tenn. B.J. 12 (2002).

Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinions, 21 No. 2 Tenn. B.J. 23 (1985).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A

State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

Treating the UPL Epidemic (William C. Bovender), 42 Tenn B.J. 26 (2006).

Disciplinary Board Opinions. In-house corporate counsel may not perform legal services for corporate customers. Formal Ethics Opinion 83-F-44 (4/13/83); Formal Ethics Opinion 83-F-44(a) (1/17/84).

The propriety of in-house counsel to an affiliated group of companies performing legal services for all of the affiliates and allowing the corporation that directly employs him to bill the affiliates for legal services performed. Formal Ethics Opinion 83-F-52 (8/12/83).

There is no impropriety in an attorney-employee of a corporation counseling, representing or appearing on behalf of the corporation in the conduct of its affairs, either in or out of court. Formal Ethics Opinion 84-F-74 (6/13/84).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

Employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee. Formal Ethics Opinion 85-F-91 (4/29/85).

A lay employee is prohibited from appearing at docket calls on behalf of the attorney. Formal Ethics Opinion 85-F-94 (5/6/85).

The propriety of a law firm allowing a non-lawyer to use its mailing address. Formal Ethics Opinion 85-F-103 (12/16/85).

It is improper for in-house attorney employees of an insurance company to represent individual insurers in legal matters arising under that company's policy. Such an arrangement constitutes a lay corporation practicing law; the holding out of an in-house attorney employee as a separate and independent law firm constitutes an unethical and deceptive practice. Formal Ethics Opinion 93-F-132 (9/10/93).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

NOTES TO DECISIONS

ANALYSIS

1. Statute of Limitations.
2. Claims Against an Estate.
3. Appropriate Sanction.
4. Improper Conduct.
5. Proper Conduct.

1. Statute of Limitations.

Where a party delayed almost six years before commencing her claim based upon the alleged unauthorized practice of law, her claim that a law firm aided and abetted the unauthorized practice of law by an accounting firm, was time barred. *Akins v. Edmondson*, 207 S.W.3d 300, 2006 Tenn. App. LEXIS 397 (Tenn. Ct. App. 2006), appeal denied, *Akins v. Edmondson*, — S.W.3d —, 2006 Tenn. LEXIS 1038 (Tenn. 2006).

2. Claims Against an Estate.

Merely filing a claim against an estate is not the practice of law; therefore, a trial court erred by finding that a hospital's claim against an estate was void because filing such a claim did not require the exercise of professional judgment since it was in essence a demand for payment. In re Estate of Jewell B. Green v. Carthage General Hosp., 246 S.W.3d 582, 2007 Tenn. App. LEXIS 455 (Tenn. Ct. App. July 20, 2007), appeal denied, In re Estate of Green v. Carthage Gen. Hosp., Inc., — S.W.3d —, 2007 Tenn. LEXIS 1113 (Tenn. Dec. 26, 2007).

3. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence

showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

4. Improper Conduct.

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. 8, DR 5.5(a) and 8.4(d) when he failed to follow the Mississippi rules in gaining pro hac vice admission was supported by substantial evidence where the trial court's error authorizing the attorney's pro hac vice admission did not remedy his noncompliance with Mississippi's rules for such admission. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

5. Proper Conduct.

Nothing in the rules suggests that compensation is a requirement for an attorney licensed in another jurisdiction to provide legal services on a temporary basis in association with a

Tennessee attorney, who is an active participant in the client's representation, as in this case; the attorney served as litigation support personnel for counsel within the scope of the Rules of Professional Conduct and was thus a qualified person under the protective order. There was no contempt and the trial court erred in holding otherwise. *Doe ex rel. Doe v. Brentwood Acad., Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 521 (Tenn. Ct. App. Nov. 20, 2020).

Attorney qualified as litigation support personnel and was not involved in providing substantive consultation on the legal aspects of the case; as such, the requirements pertaining to independent experts or independent consultants did not apply to the attorney, and there was no contempt and the trial court erred in holding otherwise. *Doe ex rel. Doe v. Brentwood Acad., Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 521 (Tenn. Ct. App. Nov. 20, 2020).

Rule 5.6. Restrictions on Right to Practice. — A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment.

[1] An agreement restricting the right of lawyers to practice after leaving a firm or organizational employer not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm or organizational employer.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to RPC 1.17.

Definitional Cross-References

None.

NOTES TO DECISIONS

1. Agreements Restricting the Practice of a Lawyer.

Where a shareholders' agreement required an attorney to share 50 percent of the contingency fees the attorney earned on files the attorney took from the firm if the attorney maintained a practice in the firm's county or surrounding counties after withdrawing from the firm, the provision was unenforceable be-

cause the economic disincentives in the resignation provision constituted an impermissible restraint on the practice of law. *Arena v. Schulman, LeRoy & Bennett, P.C.*, 233 S.W.3d 809, 2006 Tenn. App. LEXIS 696 (Tenn. Ct. App. Oct. 27, 2006), rehearing denied, *Arena v. Schulman, LeRoy & Bennett*, — S.W.3d —, 2006 Tenn. App. LEXIS 773 (Tenn. Ct. App. Nov. 17, 2006).

Rule 5.7. Responsibilities Regarding Law-Related Services. — (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision

of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment.

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] RPC 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See, e.g.*, RPC 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example, through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2), unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal

services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with RPC 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by RPC 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls comply in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical, or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflicts of interest (RPCs 1.7 through 1.11, especially RPCs 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of RPC 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with

RPCs 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest, and permissible business relationships with clients. *See also* RPC 8.4 (Misconduct).

Definitional Cross-References

"Knows" *See* RPC 1.0(f)

"Reasonable" and "reasonably" *See* RPC 1.0(h)

CHAPTER 6

PUBLIC SERVICE

Rule 6.1. Pro Bono Publico Service. — A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial portion of such services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or at a substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, or charitable religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system, or the legal profession.

(c) In addition to providing pro bono publico legal services, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment.

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those

unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. This Rule urges all lawyers to provide a

minimum of 50 hours of pro bono service annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeals.

[2] Paragraphs (a)(1) and (a)(2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (a)(2) include those who qualify financially for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, abused women's centers, and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (a)(2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this paragraph. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means. In some cases, a fee paid by the government to an appointed lawyer will be so low relative to what would have been a reasonable fee for the amount and quality of work performed — as in post-conviction death penalty cases — that the lawyer should be credited for the purpose of this Rule as having rendered the services without fee. This would also be the case when a lawyer is appointed as counsel in a criminal matter, the fee paid the lawyer is capped at a

certain amount, and the lawyer expends significant time working on the case after the capped amount has been exceeded.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraph (a), the commitment can also be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a), (b)(1), and (b)(2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraphs (b)(3) and (c).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural, and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this paragraph.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system, or the legal profession. A few examples of the many activities that fall within this paragraph are serving on bar association committees; serving on boards of pro bono or legal services programs; taking part in Law Day activities; acting as a continuing legal education instructor; serving as a mediator or an arbitrator; and engaging in legislative lobbying to improve the law, the legal system, or the profession.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] Because this Rule states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

Definitional Cross-Reference

“Substantial” and “substantially” See RPC 1.0(l)

Law Reviews. Deposition Tactics and Ethics (Donald F. Paine), 25 No. 3 Tenn. B.J. 21 (1989).

Discovery for Paupers (Donald F. Paine), 25 No. 6 Tenn. B.J. 35 (1989).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

Tennessee Rule 6.1: Its Origin, Evolution and Impact, 49 Tenn. B.J. 22 (2013).

Disciplinary Board Opinions. An attorney not competent to handle criminal cases shall not accept representation in a criminal case. Formal Ethics Opinion 81-F-24 (12/31/81).

The lawyer referral service of a nonprofit metropolitan bar association inquires concerning the propriety of requiring participating members to help finance the service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115 (9/12/88).

Ethical propriety of non-profit statewide bar association requiring participating members to help finance their lawyer referral service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115(a) (1/17/89).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

The ethical obligation of a court appointed attorney for a death sentenced person in a proceeding for post conviction relief, where the client has a history of being treated for mental illness, and has filed a pro se motion seeking to dismiss his petition, waiving all his rights and reinstating the execution date. Formal Ethics Opinion 92-F-129 (1992).

Rule 6.2. Accepting Appointments. — A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in a violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.

Comment.

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer’s freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See RPC 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see RPC 1.1, or if undertaking the rep-

resentation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Definitional Cross-Reference

“Tribunal” See RPC 1.0(m)

Law Reviews. Public Opinion of the Legal Profession — A Necessary Response by the Bar

and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

The Lawyer's Moral Autonomy & Formal Opinion 140 (Ernest F. Lidge III), 33 No. 1 Tenn. B.J. 12 (1997).

Disciplinary Board Opinions. An attorney not competent to handle criminal cases shall not accept representation in a criminal case. Formal Ethics Opinion 81-F-24 (12/31/81).

Court appointed attorney — Delegation or assignment of duty. Formal Ethics Opinion 83-F-47 (5/23/83).

The ethical obligation of court appointed counsel when the client insists that counsel not oppose the imposition of the death penalty. Formal Ethics Opinion 84-F-73 (6/13/84).

Obligations of an attorney appointed by the court to represent an indigent prisoner when the attorney believes the cause is frivolous or no facts exist in support of the cause. Formal Ethics Opinion 85-F-85 (1/2/85); Formal Ethics Opinion 85-F-85(a) (3/4/85).

The lawyer referral service of a nonprofit metropolitan bar association inquires concerning the propriety of requiring participating members to help finance the service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115 (9/12/88).

Ethical propriety of non-profit statewide bar association requiring participating members to

help finance their lawyer referral service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115(a) (1/17/89).

The propriety of an attorney who is not competent to handle criminal cases accepting representation in a criminal case. Formal Ethics Opinion 92-F-127 (3/13/92).

The ethical obligation of a court appointed attorney for a death sentenced person in a proceeding for post conviction relief, where the client has a history of being treated for mental illness, and has filed a pro se motion seeking to dismiss his petition, waiving all his rights and reinstating the execution date. Formal Ethics Opinion 92-F-129 (1992).

Right of attorney appointed on behalf of minor seeking abortion via judicial bypass procedure to decline the appointment for moral, religious or malpractice insurance reasons. Formal Ethics Opinion 96-F-140 (6/13/96).

Court-appointed attorneys for minors seeking abortions via judicial bypass of parental consent serves not as guardian ad litem but as advocate for the minor; such counsel must not fail to seek the minor's lawful objective, and has a duty of undivided loyalty to the minor. Formal Ethics Opinion 96-F-140 (6/13/96).

Rule 6.3. Membership in Legal Services Organization. — A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. However, the lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under RPC 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment.

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Definitional Cross-References

"Knowingly" See RPC 1.0(f)

"Law firm" See RPC 1.0(c)

"Material" See RPC 1.0(o)

Law Reviews. The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

Rule 6.4. Law Reform Activities Affecting Client Interests. — A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact, but need not identify the client.

Comment.

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also RPC 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should

be mindful of obligations to clients under other Rules, particularly RPC 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

Definitional Cross-References

“Knows” See RPC 1.0(f)

“Materially” See RPC 1.0(o)

Law Reviews. Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs. — (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term, limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to RPCs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this Rule.

Comment.

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term, limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., RPCs 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited

scope of the representation. See RPC 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including RPCs 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with RPCs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with RPC 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is disqualified by RPCs 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by

the lawyer's firm, paragraph (b) provides that RPC 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with RPC 1.10 when the lawyer knows that the lawyer's firm is disqualified by RPCs 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term, limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client

being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term, limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, RPCs 1.7, 1.9(a), and 1.10 become applicable.

Definitional Cross-Reference

"Knows" See RPC 1.0(f)

CHAPTER 7

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communication Concerning a Lawyer's Services. — A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. [Amended by order filed March 6, 2017, effective upon filing.]

Comment.

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by RPC 7.2 and solicitations directed to specific recipients permitted by RPC 7.3. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] See RPC 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] A lawyer may advertise the fact that a subjective characterization or description has been conferred upon him or her by an organization as long as the organization has made inquiry into the lawyer's fitness and does not issue or confer such designations indiscriminately or for a price.

Definitional Cross-Reference

"Material" and "materially" See RPC 1.0(o)

Compiler's Notes. In its order filed April 23, 2013, the Supreme Court provided that on May 31, 2012, the Tennessee Association for Justice ("TAJ") filed a petition to amend the Rules of Professional Conduct relating to attorney advertising. In August 2012, the TAJ filed a brief in support of its petition, and Attorney Matthew C. Hardin filed a separate petition proposing related but distinct amendments. In an order issued on September 14, 2012, the Court solicited additional briefing to assist in the review of this matter, and both the TAJ and Attorney Hardin filed supplemental petitions on November 14, 2012. In an Order issued on November 26, 2012, this Court solicited public comment on the above-styled petition. Following an extension, the comment period closed on March 11, 2013.

Initially, we commend the petitioners for the time and study devoted to this important issue. After careful consideration of the petitions, briefs, and the significant number of public comments submitted on the proposed amend-

ments, we have determined that the continued enforcement of the existing rules is preferable to any of the changes sought by the petitioners. It is ORDERED, therefore, that each of the petitions to amend the Rules of Professional Conduct relating to attorney advertising be denied.

In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Advertising, Solicitation, and Prepaid Legal Services (R. Laken Mitchell), 40 Tenn. L. Rev. 439.

Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

Lawyer Advertising and Solicitation: The Revised Tennessee Code of Professional Responsibility, 51 Tenn. L. Rev. 853 (1984).

Professional Ethics—Direct Mailings by Attorneys to Target Audiences, 16 Mem. St. U.L. Rev. 409 (1986).

Regulation of the Bar in Tennessee (Walter P. Armstrong, Jr.), 53 Tenn. L. Rev. 723 (1986).

Disciplinary Board Opinions. Distributing a law firm brochure. Formal Ethics Opinion

81-F-17 (8/26/81); Formal Ethics Opinion 83-F-49 (7/14/83); Formal Ethics Opinion 83-F-40(a) (1/18/84).

A legal services law office shall not give information about a client to an agency funding the law office. Formal Ethics Opinion 82-F-25 (2/22/82).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The propriety of an attorney advertising via direct mailing. Formal Ethics Opinion 84-F-78 (10/17/84).

Propriety of a law firm selling to non-clients subscriptions to a monthly publication designed to provide information to lay persons of current developments in various areas of law. Formal Ethics Opinion 85-F-87 (1/16/85).

No impropriety in distributing a law firm brochure to familiarize the firm's clients about backgrounds, interests and areas of practice of the firm's members. Formal Ethics Opinion 85-F-95 (5/6/85).

A lawyer may not advertise in an area, using a local telephone number and/or address, when the lawyer's actual office is in another area. Formal Ethics Opinion 89-F-120 (9/19/89).

A licensed attorney who is engaged in the regular practice of law and also serves as a mediator may indicate both activities together on letterhead, office sign, professional card, or publication without violating former Code of Professional Responsibility DR 2-102(E). Formal Ethics Opinion 93-F-131 (9/10/93).

Lawyers may post electronic material on an Internet World Wide Web site or permit electronic material to be available to prospective clients seeking information regarding the retention of a lawyer. Advisory Ethics Opinion 95-A-570 and 95-A-576.

Disclosures required in advertisements relating to the certification of specialization. Formal Ethics Opinion 95-F-137 (12/8/95); 95-F-137(a) (12/11/98).

Lawyers listing areas of practice on the Internet, including law directories or other Web sites available to the general public should comply with the certification of specialization disclosure requirements of former Code of Professional Responsibility DR 2-101(C). Compliance is assured if the initial screen for each lawyer includes a certain precise explanation displayed in a prominent manner. Formal Ethics Opinion 99-F-144 (6/14/99).

Where an attorney is not certified in all areas of practice advertised, all three separate precise disclosures listed in former Code of Professional Responsibility DR 2-101(c) are required. Full compliance with such disclosure requirements is required on January 1, 2000. Formal Ethics Opinion 99-F-144(a) (12/10/99).

NOTES TO DECISIONS

1. In General.

In light of the alternative remedies if an attorney exceeds the bounds of permissible conduct, coupled with the limitations the supreme court of Tennessee has placed on the absolute

litigation privilege itself, the court is satisfied that the privilege cannot be exploited as an opportunity to defame with impunity. *Simpson Strong-Tie Co. v. Stewart*, 232 S.W.3d 18, 2007 Tenn. LEXIS 654 (Tenn. Aug. 20, 2007).

Rule 7.2. Advertising. — (a) Subject to the requirements of paragraphs (b) through (d) below and RPCs 7.1, 7.3, 7.4, 7.5, and 7.6, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.

(c) A lawyer shall not give anything of value to a person for recommending or publicizing the lawyer's services except that a lawyer may pay for the following:

(1) the reasonable costs of advertisements permitted by this Rule;
 (2) the usual charges of a registered intermediary organization as permitted by RPC 7.6;

(3) a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; or

(4) a law practice in accordance with RPC 1.17.

(d) Except for communications by registered intermediary organizations, any advertisement shall include the name and office address of at least one lawyer or law firm assuming responsibility for the communication. [Amended by order filed March 6, 2017, effective upon filing.]

Comment.

[1] This Rule governs general advertising through public media and other communications that are not directed to specifically identified individuals. The Rule encompasses all possible media through which such communications may be directed to the public. Communications that are directed to specifically identified recipients are governed by RPC 7.3.

[2] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Further, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services is significant. Nevertheless, advertising by lawyers shall not contain false or misleading communications about the lawyer or the lawyer's services.

[3] Among other things, this Rule permits public dissemination of information concerning

a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[4] Neither this Rule nor RPC 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a lawyer retain a copy or recording of any advertisement for two years after its last dissemination along with a record of when and where the advertisement appeared. If advertisements that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by retaining a single copy of the advertisement for two years after

the last of the materially similar advertisements are disseminated. A lawyer may comply with the requirement of paragraph (b) by complying with guidelines that may be adopted by the Board of Professional Responsibility concerning certain types of advertisements, including websites, e-mail, or other electronic forms of communication or of changes to such communications.

Paying Others to Recommend a Lawyer

[6] A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of RPC 1.17, but otherwise is not permitted to pay another person for channeling professional work to the lawyer. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

[7] A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client lead, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with RPCs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services), and subject to RPC 7.6 and Tenn. Sup. Ct. R. 44 if the lead generator qualifies as an intermediary organization pursuant to RPC 7.6. To comply with RPC 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. *See also* RPC 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the Rules through the acts of another).

Definitional Cross-References

"Law firm" *See* RPC 1.0(c)

"Reasonable" *See* RPC 1.0(h)

"Written" *See* RPC 1.0(n)

Compiler's Notes. In its order filed April 23, 2013, the Supreme Court provided that on May 31, 2012, the Tennessee Association for Justice ("TAJ") filed a petition to amend the Rules of

Professional Conduct relating to attorney advertising. In August 2012, the TAJ filed a brief in support of its petition, and Attorney Matthew C. Hardin filed a separate petition proposing related but distinct amendments. In an order issued on September 14, 2012, the Court solicited additional briefing to assist in the review of this matter, and both the TAJ and Attorney Hardin filed supplemental petitions on November 14, 2012. In an Order issued on November 26, 2012, this Court solicited public comment on the above-styled petition. Following an extension, the comment period closed on March 11, 2013.

Initially, we commend the petitioners for the time and study devoted to this important issue. After careful consideration of the petitions, briefs, and the significant number of public comments submitted on the proposed amendments, we have determined that the continued enforcement of the existing rules is preferable to any of the changes sought by the petitioners. It is ORDERED, therefore, that each of the petitions to amend the Rules of Professional Conduct relating to attorney advertising be denied.

In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Law Reviews. Advertising, Solicitation, and Prepaid Legal Services (R. Laken Mitchell), 40 Tenn. L. Rev. 439.

Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

Lawyer Advertising and Solicitation: The Revised Tennessee Code of Professional Responsibility, 51 Tenn. L. Rev. 853 (1984).

Professional Ethics—Direct Mailings by Attorneys to Target Audiences, 16 Mem. St. U.L. Rev. 409 (1986).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), 41 Tenn. L. Rev. 505.

Attorney Advertising in The Litigators and Modern-Day America: The Continued Importance of the Public's Need for Legal Information, 48 U. Mem. L. Rev. 960 (2018).

Disciplinary Board Opinions. The propriety of an attorney participating in a trade exchange association or barter group wherein a fee or membership charge is made by the association or group on each transaction. Formal Ethics Opinion 80-F-3 (10/6/80); Formal Ethics Opinion 80-F-3(a) (4/12/84).

Distributing a law firm brochure. Formal Ethics Opinion 81-F-17 (8/26/81); Formal Ethics Opinion 83-F-49 (7/14/83); Formal Ethics Opinion 83-F-40(a) (1/18/84).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

Use of trade names, or names that are misleading as to the identity of attorneys practicing in a firm are prohibited. Formal Ethics Opinion 82-F-37 (12/14/82). Formal Ethics Opinion 83-F-40 (4/14/83).

The propriety of an attorney advertising via direct mailing. Formal Ethics Opinion 84-F-78 (10/17/84).

The use of the disclaimer “An Association of Attorneys” intends to designate the absence of a partnership. Formal Ethics Opinion 84-F-82 (10/17/84) (This opinion vacates Formal Ethics Opinion 84-F-64).

Propriety of a law firm selling to non-clients subscriptions to a monthly publication designed to provide information to lay persons of current developments in various areas of law. Formal Ethics Opinion 85-F-87 (1/16/85).

No impropriety in distributing a law firm brochure to familiarize the firm's clients about backgrounds, interests and areas of practice of the firm's members. Formal Ethics Opinion 85-F-95 (5/6/85).

The propriety of participating in prepaid legal service plans. Formal Ethics Opinion 85-F-102 (12/16/85).

The lawyer referral service of a nonprofit metropolitan bar association inquires concerning the propriety of requiring participating members to help finance the service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115 (9/12/88).

Ethical propriety of non-profit statewide bar association requiring participating members to help finance their lawyer referral service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115(a) (1/17/89).

Lawyers may post electronic material on an Internet World Wide Web site or permit electronic material to be available to prospective clients seeking information regarding the retention of a lawyer. Advisory Ethics Opinion 95-A-570 and 95-A-576.

NOTES TO DECISIONS

1. Violation.

Board of Professional Responsibility Hearing Panel's finding that the attorney violated the rule was supported by substantial and material evidence because the attorney's website represented her as having “Certification/Specialties” in “Family Law, Divorce”, and the attorney

admitted she was not certified as a specialist in any field of law; the attorney bore the responsibility for the misrepresentation on her website. Bd. of Prof'l Responsibility v. Reguli, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Rule 7.3. Solicitation of Potential Clients. — (a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a potential client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer; or

(3) has initiated a contact with the lawyer.

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded, or electronic communication or by in-person, live telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence; or

(3) a significant motive for the solicitation is the lawyer's pecuniary gain and the communication concerns an action for personal injury, divorce or legal separation, worker's compensation, wrongful death, or otherwise relates to an accident, filing of divorce or legal separation, or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident, filing of divorce or legal separation, or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

(c) If a significant motive for the solicitation is the lawyer's pecuniary gain, a lawyer shall not send a written, recorded, or electronic communication soliciting professional employment from a specifically identified recipient who is not a person specified in paragraphs (a)(1) or (a)(2) or (a)(3), unless the communication complies with the following requirements:

(1) The words "Advertising Material" appear on the outside of the envelope, if any, in which a communication is sent and at the beginning and ending of any written, recorded or electronic communication.

(2) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.

(3) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.

(4) Written communications shall not be in the form of or include legal pleadings or other formal legal documents.

(5) Communications delivered to potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.

(6) Any communication seeking employment by a specific potential client in a specific matter shall comply with the following additional requirements:

(i) The communication shall disclose how the lawyer obtained the information prompting the communication;

(ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and

(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."

(7) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule shall be retained by

the lawyer for two years after its last dissemination along with a record of when, and to whom, it was sent.

(d) Unless the contents thereof include a solicitation of employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements of RPC 7.5, newsletters, brochures, and other similar communications. [Amended by order filed February 12, 2015, effective May 1, 2015; and amended by order filed March 6, 2017, effective upon filing.]

Comment.

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website, or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone, or real-time electronic contact by a lawyer with a potential client known to need legal services. These forms of contact between a lawyer and a potential client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The potential client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching. The restrictions set forth in this Rule, however, do not apply to efforts by a lawyer to get hired as an in-house counsel by a potential client.

[3] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation of potential clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under this Rule offer alternative means of conveying necessary information to potential clients who may be in need of legal services. Advertising and written and recorded communications which may be mailed or electronically transmitted make it possible for a potential client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the potential client to direct in-person, live telephone, or real-time electronic per-

suasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to potential client, rather than direct in-person, live telephone, or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of direct in-person, live telephone, or real-time electronic conversations between a lawyer and a potential client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a family, close personal, or prior professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in RPC 7.3(a) and the requirements of RPC 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information which is false or misleading within the meaning of RPC 7.1, which involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence, which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer, or which occurs within thirty (30) days after an accident or disaster involving the individual or a member of the individual's family, is prohibited by RPC 7.3(b). Moreover, if after sending a letter or other communication as permitted by RPC 7.2 the lawyer receives no response, any further effort to communicate

with the potential client may violate the provisions of RPC 7.3(b)(1). Communications directed to specifically identified recipients must be identified as advertisements, may need to be marked with other disclaimers, and cannot be formatted or delivered in such a manner as to mislead the recipient about the nature of the communication.

[6A] RPC 7.3(b)(3) includes a prohibition against any solicitation of a prospective client within thirty (30) days of the filing of a complaint for divorce or legal separation involving that person, if a significant motive for the solicitation is the lawyer's pecuniary gain. Some divorce or legal separation cases involve either an alleged history of domestic violence or a potential for domestic violence. In such cases, a defendant spouse's receipt of a lawyer's solicitation prior to being served with the complaint can increase the risk of a violent confrontation between the parties before the statutory injunctions take effect. *See* Tenn. Code Ann. § 36-4-106(d) (2014) (imposing specified temporary injunctions, including "[a]n injunction restraining both parties from harassing, threatening, assaulting or abusing the other," that take effect "[u]pon the filing of a petition for divorce or legal separation, and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent") (emphasis added). The prohibition in RPC 7.3(b)(3) against any solicitation within thirty (30) days of the filing of a complaint for divorce or legal separation is intended to reduce any such risk and to allow the plaintiff spouse in such cases to take appropriate steps to seek shelter, an order of protection, and/or any other relief that might be available.

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties if the lawyer's purpose is to inform such entities of the lawyer's willingness to cooperate with the plan in compliance with RPC 7.6. This form of communication is not directed to a potential client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become potential clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to, and serve the same purpose as, advertising permitted under RPC 7.2.

[8] The requirement in RPC 7.3(c) that certain communications be marked as advertisements and contain other disclaimers do not apply to communications sent in response to requests of potential clients or their spokesper-

sons or sponsors. Nor do those requirements apply to general announcements by lawyers, including changes in personnel or office location, newsletters, brochures, and other similar communications which do not contain a solicitation of professional employment.

[9] Paragraph (c)(6) requires that a lawyer retain a copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule for two years after its last dissemination along with a record of the name of the person contacted and the person's address, telephone number, or telecommunication address to which the communication was sent. If communications identical in content are sent to two or more persons, the lawyer may comply with this requirement by retaining a single copy of the communication together with a list of the names and addresses of the persons to whom the communications were sent.

Definitional Cross-References

"Fraud" *See* RPC 1.0(d)

"Known" *See* RPC 1.0(f)

"Written" *See* RPC 1.0(n)

Compiler's Notes. In its order filed February 12, 2015, the Supreme Court provided that: "On October 9, 2014, the Court filed an order soliciting public comments on a proposed amendment to Tenn. Sup. Ct. R. 8, RPC 7.3. As we summarized in that order, the Court had received a letter from a private attorney whose law practice is focused on divorce and family law, and that attorney had suggested that RPC 7.3(b)(3) be amended by adding 'divorce or legal separation' to the other causes of action listed in that provision. The text of the proposed amendment was set out in the appendix to the public-comment order. The deadline for submitting written comments on the proposed amendment was Monday, November 10, 2014.

"After due consideration of the proposed amendment and the written comments submitted during the comment period, the Court hereby amends Tenn. Sup. Ct. R. 8, RPC 7.3(b)(3), and adopts new Comment [5A], as set out in the Appendix to this order. The effective date of the amended RPC 7.3(b)(3) and the new Comment [5A] is May 1, 2015."

In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submit-

ting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility (“BPR”) and the Knoxville Bar Association (“KBA”). The KBA’s written comments stated it approved of the TBA’s petition and the amendments proposed therein. The BPR’s written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR’s comments, noting whether it agreed with each of the BPR’s written comments. The Court thanks the TBA, BPR, and KBA for their input.

“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

Law Reviews. Advertising, Solicitation, and Prepaid Legal Services (R. Laken Mitchell), 40 Tenn. L. Rev. 439.

Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

Lawyer Advertising and Solicitation: The Revised Tennessee Code of Professional Responsibility, 51 Tenn. L. Rev. 853 (1984).

Professional Ethics—Direct Mailings by Attorneys to Target Audiences, 16 Mem. St. U.L. Rev. 409 (1986).

The Rainmaker Film: A Window to View Lawyers and Professional Responsibility, 48 U. Mem. L. Rev. 826 (2018).

Disciplinary Board Opinions. A lawyer may accept, but shall not seek, employment

from those contacted for the purpose of obtaining their joinder, if success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others. Formal Ethics Opinion 81-F-7 (6/4/81).

Distributing a law firm brochure. Formal Ethics Opinion 81-F-17 (8/26/81); Formal Ethics Opinion 83-F-49 (7/14/83); Formal Ethics Opinion 83-F-40(a) (1/18/84).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The propriety of an attorney advertising via direct mailing. Formal Ethics Opinion 84-F-78 (10/17/84).

Propriety of a law firm selling to non-clients subscriptions to a monthly publication designed to provide information to lay persons of current developments in various areas of law. Formal Ethics Opinion 85-F-87 (1/16/85).

Unsolicited contact by lawyer with nonclient seeking employment as violation; ethical requirement of lawyer with knowledge of such unsolicited contact to report the conduct. Formal Ethics Opinion 88-F-114.

Lawyers may post electronic material on an Internet World Wide Web site or permit electronic material to be available to prospective clients seeking information regarding the retention of a lawyer. Advisory Ethics Opinion 95-A-570 and 95-A-576.

It is unethical for a lawyer to pay, or even request, a bail bondsman to refer cases to the lawyer, or to give the bail bondsman the lawyer’s business card for the purpose of the bail bondsman referring cases to the lawyer. Formal Ethics Opinion 96-F-138 (3/8/96).

Rule 7.4. Communication of Fields of Practice and Specialization.

— Subject to the requirements of RPCs 7.1, 7.2, and 7.3,

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.

(c) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.

(d) A lawyer who has been certified as a specialist in a field of law by an organization accredited by the American Bar Association’s House of Delegates, and who has registered such certification with the Tennessee Commission on Continuing Legal Education, may state that the lawyer “is certified as a specialist in [field of law] by [accredited organization].” [Amended by order filed December 16, 2014, effective January 1, 2015.]

Comment.

[1] This Rule permits a lawyer to indicate

areas of practice in communications about the lawyer’s services. If a lawyer practices only in

certain fields or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.

[2] However, a lawyer may not communicate that the lawyer is a “specialist,” practices a “specialty,” “specializes in” a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office, as reflected in paragraph (c).

[3] Paragraph (d) permits a lawyer to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association’s House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.

Compiler’s Notes.

In its order filed December 16, 2014, the Supreme Court stated, in part: “The amended rules adopted herein are intended to apply to the year beginning on January 1, 2015 and to succeeding years. For that reason, and at the request of the Commission, the Court hereby sets the following effective dates for the amendments. The amendments set out in Appendix A (revised Rule 21, Sections 1, 2, 3, 4, 5, 8, 9, 10 and 11) shall take effect on January 1, 2015 and shall apply prospectively. The amendments set out in Appendix B (revised Sections 6 and 7, Rule 21) shall take effect on January 1, 2016. The amendments set out in Appendix C (the related amendments to Rule 8, RPC 7.4, Comment [3] to that RPC, and Rule 31, Section 18(a)(3)) shall take effect on January 1, 2015 and shall apply prospectively. All matters pertaining to compliance with Rule 21 on or before the foregoing effective dates shall continue to be governed by the version of Rule 21 in effect during the pertinent compliance year.”

Definitional Cross-Reference

“Substantially” See RPC 1.0(l)

Law Reviews. Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

Disciplinary Board Opinions. Distributing a law firm brochure. Formal Ethics Opinion 81-F-17 (8/26/81); Formal Ethics Opinion 83-F-49 (7/14/83); Formal Ethics Opinion 83-F-40(a) (1/18/84).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The ethical obligation of an attorney to disclaim any certification of expertise when advertising in national publications. Formal Ethics Opinion 84-F-71 (5/29/84).

The propriety of an attorney board certified in another state and licensed in Tennessee advertising his specialty and board certification in Tennessee. Formal Ethics Opinion 84-F-72 (6/13/84).

There is no impropriety in an attorney listing in the biographical section of Martindale-Hubbell three areas of practice to which he devotes a significant portion of his time. Formal Ethics Opinion 84-F-76 (10/16/84).

The propriety of an attorney advertising via direct mailing. Formal Ethics Opinion 84-F-78 (10/17/84).

The propriety of advertising legal services for admiralty and other workers’ compensation claims. Formal Ethics Opinion 84-F-79 (10/17/84).

Propriety of a law firm selling to non-clients subscriptions to a monthly publication designed to provide information to lay persons of current developments in various areas of law. Formal Ethics Opinion 85-F-87 (1/16/85).

No impropriety in distributing a law firm brochure to familiarize the firm’s clients about backgrounds, interests and areas of practice of the firm’s members. Formal Ethics Opinion 85-F-95 (5/6/85).

A licensed attorney who is engaged in the regular practice of law and also serves as a mediator may indicate both activities together on letterhead, office sign, professional card, or publication without violating Code of Professional Responsibility DR 2-102(E). Formal Ethics Opinion 93-F-131 (9/10/93).

The lawyer referral service of a nonprofit metropolitan bar association inquires concerning the propriety of requiring participating members to help finance the service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115 (9/12/88).

Ethical propriety of non-profit statewide bar association requiring participating members to help finance their lawyer referral service by contributing a percentage of fees generated by referrals. Formal Ethics Opinion 88-F-115(a) (1/17/89).

Lawyers may post electronic material on an Internet World Wide Web site or permit electronic material to be available to prospective clients seeking information regarding the retention of a lawyer. Advisory Ethics Opinion 95-A-570 and 95-A-576.

Disclosures required in advertisements relating to the certification of specialization. Formal Ethics Opinion 95-F-137 (12/8/95); 95-F-137(a) (12/11/98).

Use of “Approved Rule 31 Mediator,” “Tennessee Supreme Court Approved Mediator” or “Rule 31 Listed Mediator” on attorney’s letter-

head. Formal Ethics Opinion 98-F-142(a) (12/11/98).

Lawyers listing areas of practice on the Internet, including law directories or other Web sites available to the general public should comply with the certification of specialization disclosure requirements of former Code of Professional Responsibility DR 2-101(C). Compliance is assured if the initial screen for each lawyer includes a certain precise explanation

displayed in a prominent manner. Formal Ethics Opinion 99-F-144 (6/14/99).

Where an attorney is not certified in all areas of practice advertised, all three separate precise disclosures listed in former Code of Professional Responsibility DR 2-101(c) are required. Full compliance with such disclosure requirements is required on January 1, 2000. Formal Ethics Opinion 99-F-144(a) (12/10/99).

NOTES TO DECISIONS

1. Violation.

Board of Professional Responsibility Hearing Panel's finding that the attorney violated the rule was supported by substantial and material evidence because the attorney's website represented her as having "Certification/Specialties" in "Family Law, Divorce", and the attorney

admitted she was not certified as a specialist in any field of law; the attorney bore the responsibility for the misrepresentation on her website. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Rule 7.5. Firm Names and Letterheads. — (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of RPC 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment.

[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired

partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] Paragraph (c) does not require a change in a law firm's name or letterhead when a member of the firm interrupts his or her practice to serve, for example, as an elected member of the Tennessee General Assembly so long as the lawyer reasonably expects to resume active and regular practice with the firm at the end of the legislative session. Such a hiatus from practice is not for a substantial period of time. If, however, a lawyer were to curtail his or her practice and enter public service for a longer or indefinite period of time, the lawyer's firm would have to alter its name and letterhead.

[3] With regard to paragraph (d), lawyers

sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Definitional Cross-References

"Firm" and "law firm" See RPC 1.0(c)

"Substantial" See RPC 1.0(l)

Law Reviews. Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

Disciplinary Board Opinions. Distributing a law firm brochure. Formal Ethics Opinion 81-F-17 (8/26/81); Formal Ethics Opinion 83-F-49 (7/14/83); Formal Ethics Opinion 83-F-40(a) (1/18/84).

A lawyer may practice law and conduct a non-law-related business from the same office. Formal Ethics Opinion 82-F-34 (9/17/82).

Use of trade names, or names that are misleading as to the identity of attorneys practicing in a firm are prohibited. Formal Ethics

Opinion 82-F-37 (12/14/82). Formal Ethics Opinion 83-F-40 (4/14/83).

The use of the disclaimer "An Association of Attorneys" intends to designate the absence of a partnership. Formal Ethics Opinion 84-F-82 (10/17/84) (This opinion vacates Formal Ethics Opinion 84-F-64).

A licensed attorney who is engaged in the regular practice of law and also serves as a mediator may indicate both activities together on letterhead, office sign, professional card, or publication without violating former Code of Professional Responsibility DR 2-102(E). Formal Ethics Opinion 93-F-131 (9/10/93).

Lawyers may post electronic material on an Internet World Wide Web site or permit electronic material to be available to prospective clients seeking information regarding the retention of a lawyer. Advisory Ethics Opinion 95-A-570 and 95-A-576.

Use of "Approved Rule 31 Mediator," "Tennessee Supreme Court Approved Mediator" or "Rule 31 Listed Mediator" on attorney's letterhead. Formal Ethics Opinion 98-F-142(a) (12/11/98).

Rule 7.6. Intermediary Organizations. — (a) An intermediary organization is a lawyer-advertising cooperative, lawyer referral service, prepaid legal insurance provider, or a similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of fee-generating legal services or the payment for or provision of legal services to the organization's customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.

(b) A lawyer shall not seek or accept a referral of a client, or compensation for representing a client, from an intermediary organization if the lawyer knows or reasonably should know that:

(1) the organization:

(i) is owned or controlled by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm; or

(ii) is engaged in the unauthorized practice of law; or

(iii) engages in marketing activities that are false or misleading or are otherwise prohibited by the Board of Professional Responsibility; or

(iv) has not registered with the Board of Professional Responsibility and complied with all requirements imposed by the Board; or

(2) the lawyer will be unable to represent the client in compliance with these Rules.

Comment.

[1] For there to be equal access to justice, there must be equal access to lawyers. For there to be equal access to lawyers, potential clients must be able to find lawyers and have the economic resources needed to pay the law-

yers a reasonable fee for their services. In an effort to assist prospective clients to find and be able to retain competent lawyers, lawyers and nonlawyers alike have formed a variety of organizations designed to bring clients and lawyers together and to provide a vehicle through

which the lawyers can be fairly compensated and the clients can afford the services they need. Some of these intermediary organizations operate as charities. Others operate as businesses. Because they ultimately bear the liability of their insureds, liability insurance companies that pay for or otherwise provide lawyers to defend their insureds are not intermediary organizations within the meaning of this Rule. Because the concerns arising from the referral of fee-generating business to lawyers are not implicated by the referral of a matter for which the lawyer does not expect to be paid a fee, the referral of such matters is exempted from this Rule. Similarly, the process by which tribunals or court agencies appoint or assign lawyers to represent parties should carry with it appropriate safeguards outside of this Rule, and these activities are likewise exempted from this Rule.

[2] The requirements set forth in paragraph (b) are intended to protect the clients who are represented by lawyers to whom they have been referred or assigned by an intermediary organization. It is the responsibility of each lawyer who would participate in the activities of an intermediary organization to act reasonably to ascertain that the organization meets the standards set forth in paragraph (b). Normally it will be sufficient for the lawyer to ascertain that the organization is registered with the Board of Professional Responsibility and to review the materials the organization has filed with the Board in compliance with the Board's reporting requirements. If, however, by virtue of his or her participation in the activities of an intermediary organization, a lawyer comes to know that the organization does not meet the standards set forth in paragraph (b), the lawyer shall terminate his or her participation in the activities of the organization and should so advise the Board of Professional Responsibility.

Definitional Cross-References

"Firm" and "law firm" *See* RPC 1.0(c)

"Knows" *See* RPC 1.0(f)

"Reasonably should know" *See* RPC 1.0(j)

Law Reviews. Advertising, Solicitation, and Prepaid Legal Services (R. Laken Mitchell), 40 Tenn. L. Rev. 439.

Attorney Advertising and the First Amendment: The Development and Impact of a Constitutional Standard (Gregory H. Bowers and Otis H. Stephens, Jr.), 17 Mem. St. U.L. Rev. 221 (1987).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

Disciplinary Board Opinions. The propriety of an attorney participating in a trade exchange association or barter group wherein a fee or membership charge is made by the association or group on each transaction. Formal Ethics Opinion 80-F-3 (10/6/80); Formal Ethics Opinion 80-F-3(a) (4/12/84).

A lawyer may conduct his law practice and a second occupation, not law-related from one office. Formal Ethics Opinion 82-F-36 (12/1/82).

The propriety of a private attorney working with a brokerage firm to provide estate planning services to the firm's clients. Formal Ethics Opinion 84-F-75 (6/18/84).

The propriety of participating in prepaid legal service plans. Formal Ethics Opinion 85-F-102 (12/16/85).

Board of Professional Responsibility's agreement with PITLA, U.S.A., Inc., a lawyer referral service, enabling PITLA's lawyer-members to ethically participate as a cooperative advertising venture. Formal Ethics Opinion 90-F-122(a) (10/23/90).

It is unethical for a lawyer to pay, or even request, a bail bondsman to refer cases to the lawyer, or to give the bail bondsman the lawyer's business card for the purpose of the bail bondsman referring cases to the lawyer. Formal Ethics Opinion 96-F-138 (3/8/96).

Activities of company that produces and places television commercials for attorneys who advertise jointly do not constitute the activities of an "intermediary organization" as defined in Supreme Court Rule 44 and Rule 8, RPC 7.6. Formal Ethics Opinion No. 2006-F-152 (6/16/06).

CHAPTER 8

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters. — An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

Comment.

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including RPC 1.6 and, in some cases, RPC 3.3.

[4] The duties owed by lawyers with respect to communications with disciplinary authorities apply to judicial disciplinary authorities as well as lawyer disciplinary authorities.

Definitional Cross-References

"Knowingly" or "known" See RPC 1.0(f)

"Material" See RPC 1.0(o)

Law Reviews. Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), III Suggested Responses of the Profession to Public Opinion, 41 Tenn. L. Rev. 512.

Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society, 37 Vand. L. Rev. 845 (1984).

Disciplinary Board Opinions. Duty to report ethics violations discovered while attempting to help attorneys with alcohol or drug problems. Formal Ethics Opinions 83-F-48 (5/23/83); Formal Ethics Opinion 87-F-4-8(a) (6/10/87).

There is no confidential relationship between attorneys when one is called upon to take over the files of another attorney. Formal Ethics Opinion 83-F-51 (8/12/83).

NOTES TO DECISIONS**ANALYSIS**

1. Appropriate Sanction.
2. Violation.

1. Appropriate Sanction.

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Forty-five-day suspension of a lawyer's license to practice law comported with Tenn. Sup. Ct. R. 9, § 4.2 because the lawyer's attempting duplicate billing of one client, abandonment of another client, and failure to cooperate with the Board of Professional Responsibility violated Tenn. Sup. Ct. R. 8, 1.3, 1.4, 1.5, 3.2, 5.3, and 8.1. *Hanzelik v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 380 S.W.3d 669, 2012 Tenn. LEXIS 647 (Tenn. Sept. 27, 2012).

Disbarment of an attorney was appropriate because the attorney failed to respond to the Tennessee Board of Professional Responsibility after complaints were filed. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

2. Violation.

Attorney violated the rule because she admitted that she never provided the Board of Professional Responsibility, as requested, with an accounting of her time on the client's matter. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Rule 8.2. Judicial and Legal Officials. — (a) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons:

- (1) a judge;
- (2) an adjudicatory officer or public legal officer; or
- (3) a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment.

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer is bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized and to responsibly speak out when necessary to prevent or rectify injustice or to promote needed improvements in the judicial system.

Definitional Cross-Reference

“Knows” See RPC 1.0(f)

Law Reviews. Ethical Requirements for Judicial Candidates (Joe G. Riley), 26 No. 3, Tenn. B.J. 12 (1990).

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), III Suggested Responses of the Profession to Public Opinion, 41 Tenn. L. Rev. 512.

Disciplinary Board Opinions. An attorney or his firm is prohibited from accepting employment in any matter upon the merits of which he or a member of his firm has acted in a judicial capacity. Formal Ethics Opinion 81-F-15 (8/26/81).

An attorney may not bring a class action to recover wrongful assessment of court costs in juvenile court when he sat as special juvenile judge on limited occasions and wrongfully assessed such costs. Formal Ethics Opinion 82-F-32 (6/18/82).

NOTES TO DECISIONS

ANALYSIS

1. False Statements.
2. Pejorative Statements.
3. Suspension.

1. False Statements.

Attorney, who sent an e-mail to a bankruptcy judge that had denied the attorney’s fee application, calling the judge a bully and clown and demanding that the judge provide a written apology for denying the fee application, was not in violation of the ethical rule that prohibited attorneys from making false statements about the qualifications or integrity of a judge, as the attorney did not send the e-mail to anyone other than judge. *Hancock v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

2. Pejorative Statements.

Decision of a hearing panel of the Board of Professional Responsibility that an attorney’s statements pejorative statements in motions to recuse three appellate judges violated the rule

was supported by material and substantial evidence because the in-court statements were not protected by the First Amendment; the objective “reasonable attorney” standard was the appropriate standard to apply in a disciplinary proceeding involving an attorney’s in-court speech. *Bd. of Prof’l Responsibility v. Parrish*, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

3. Suspension.

Hearing panel acted arbitrarily and capriciously in finding that a public censure was warranted because an attorney made pejorative statements in motions to recuse three appellate judges knowingly, not negligently; therefore, ABA Standard for Imposing Lawyer Sanctions 6.12 applied, and the presumptive sanction was suspension, not reprimand. *Bd. of Prof’l Responsibility v. Parrish*, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

Rule 8.3. Reporting Professional Misconduct. — (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the Disciplinary Counsel of the Board of Professional Responsibility.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Disciplinary Counsel of the Board of Judicial Conduct.

(c) This Rule does not require disclosure of information otherwise protected by RPC 1.6 or information gained by a lawyer or judge while serving as a member of a lawyer assistance program approved by the Supreme Court of Tennessee or by the Board of Professional Responsibility. [As amended by order filed February 27, 2013.]

Comment.

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of RPC 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer or judge in the course of that lawyer's or judge's participation in an approved lawyers or judges assistance program. In that circum-

stance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The extent to which information received by a lawyer or judge participating in an approved lawyers assistance program must be kept confidential is governed not by these rules, but by the rules of the program or other law. See, e.g., Tenn. Code Ann. §§ 23-4-104 and -105; Tenn. Sup. Ct. R. 33.10.

Definitional Cross-Reference

"Substantial" See RPC 1.0(l)

Compiler's Notes. In its order filed June 23, 2016, the Supreme Court provided that: "The Retired Judges Committee of the Tennessee Judicial Conference is establishing a state-wide judges assistance program to be known as the Tennessee Retired Judges Confidential Assistance Program, through which volunteer retired Tennessee judges will provide confidential assistance to sitting Tennessee judges regarding personal and professional matters. In order to encourage sitting judges to seek assistance through this Program, the volunteer retired judges are required to treat all information received in the course of providing such assistance as confidential, and all such information is deemed privileged and not subject to disclosure to the same extent as information subject to the attorney-client privilege."

"The Court has determined that in order to foster this Program, it is necessary to amend certain provisions of the Rules of Professional Conduct and the Rules of Judicial Conduct, Rules 8 and 10 of the Rules of the Tennessee Supreme Court, which address the reporting of professional misconduct. The Court has determined to solicit public comments on the proposed amendments."

"Accordingly, the Court solicits written comments regarding the proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The proposed amendments to Rules 8 and 10 are set out Appendices A and B to this Order. The deadline for submitting written comments is Monday, July 25, 2016. Written comments should be addressed to: James M. Hivner, Clerk, RE: Tenn. Sup. Ct. R. 8 and 10, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407 and should reference the docket number set out above [No. ADM2016-01250]."

The rule changes in its order filed June 23, 2016 do not appear to have been adopted by the court as of May 14, 2018.

Law Reviews. Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), III Suggested Responses of the Profession to Public Opinion, 41 Tenn. L. Rev. 512.

Disciplinary Board Opinions. Duty to report ethics violations discovered while attempting to help attorneys with alcohol or drug

problems. Formal Ethics Opinions 83-F-48 (5/23/83); Formal Ethics Opinion 87-F-4-8(a) (6/10/87).

There is no confidential relationship between attorneys when one is called upon to take over the files of another attorney. Formal Ethics Opinion 83-F-51 (8/12/83).

Unsolicited contact by lawyer with nonclient seeking employment as violation; ethical requirement of lawyer with knowledge of such unsolicited contact to report the conduct. Formal Ethics Opinion 88-F-114.

Fee arbitration committee members of the various bar associations are excused from their ethical obligation to report ethical misconduct discovered during the course of their service as a fee arbitration committee member. Formal Ethics Opinion 89-F-119 (8/11/89).

A privilege of not requiring disclosure of confidences and secrets is afforded to lawyers participating in Colleague Programs sponsored by local bar associations to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege. Formal Ethics Opinion 91-F-126 (9/13/91).

NOTES TO DECISIONS

1. Evidence.

Hearing panel did not err by allowing the Board of Professional Responsibility of the Supreme Court of Tennessee to present evidence related to an attorney's conduct in a case where he was sanctioned for misconduct because the attorney's conduct, which included failure to comply with multiple court orders and procedural rules, violated multiple the Tennessee

Rules of Professional Conduct, including Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3 and 8.4(d); pursuant to Tenn. Sup. Ct. R. Prof. Conduct 8, 8.3, a lawyer was not only authorized to report the misconduct but was obligated to do so, irrespective of whether he was involved in the case. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Rule 8.4. Misconduct. — It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based. [Amended by order filed March 6, 2017, effective upon filing.]

Comment.

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. Although under certain circumstances a single offense reflecting adversely on a lawyer's fitness to practice — such as a minor assault — may not be sufficiently serious to warrant discipline, a pattern of repeated offenses, even ones that are of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of RPC 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[5] Paragraph (c) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Such conduct reflects adversely on the lawyer's fitness to practice law. In some circumstances, however, prosecutors are authorized by law to use, or to direct investigative agents to use, investigative techniques that might be regarded as deceitful. This Rule does not prohibit such conduct.

[6] The lawful secret or surreptitious recording of a conversation or the actions of another

for the purpose of obtaining or preserving evidence does not, by itself, constitute conduct involving deceit or dishonesty. *See* RPC 4.4.

[7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director, or manager of a corporation or other organization.

[8] Paragraph (f) precludes a lawyer from assisting a judge or judicial officer in conduct that is a violation of the rules of judicial conduct. A lawyer cannot, for example, make a gift, bequest, favor, or loan to a judge, or a member of the judge's family who resides in the judge's household, unless the judge would be permitted to accept, or acquiesce in the acceptance of such a gift, favor, bequest, or loan in accordance with RJC 3.13 of the Code of Judicial Conduct.

[9] In both their professional and personal activities, lawyers have special obligations to demonstrate respect for the law and legal institutions. Normally, a lawyer who knowingly fails to obey a court order demonstrates disrespect for the law that is prejudicial to the administration of justice. Failure to comply with a court order is not a disciplinary offense, however, when it does not evidence disrespect for the law either because the lawyer is unable to comply with the order or the lawyer is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

Definitional Cross-References

"Fraud" *See* RPC 1.0(d)

"Knowingly" *See* RPC 1.0(f)

"Tribunal" *See* RPC 1.0(m)

Compiler's Notes. In its order filed May 10, 2013, the Supreme Court provided that: "on February 6, 2013, the Board of Professional Responsibility (BPR) filed a petition asking the Court to amend Rule 8, RPC 8.4, of the Rules of the Tennessee Supreme Court to add a new paragraph (h), making it professional misconduct for a lawyer to engage, in a professional capacity, in certain discriminatory conduct. By Order filed February 13, 2013, the Court published the BPR's proposed amendment for public comment with a comment deadline of April 1, 2013. By Order filed April 2, 2013, the Court extended the comment deadline to May 1, 2013."

"The Court carefully considered the BPR's proposed amendment, the comments received, including the points and issues raised therein, and the entire matter. Given the clarity and scope of RPC 8.4(d) and Comment [3] and their similarity to the corresponding ABA Model Rule and comment, the BPR's petition to amend Rule 8, RPC 8.4 was denied."

In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennes-

see Bar Association ("TBA") filed a petition asking the Court to amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

In its order filed April 23, 2018, the Supreme Court provided: "On November 15, 2017, the Tennessee Board of Professional Responsibility ("BPR") and the Tennessee Bar Association ("TBA") filed a petition asking the Court to amend Rule 8, RPC 8.4 of the Rules of the Tennessee Supreme Court by adopting a new RPC 8.4(g). This proposed rule of professional conduct provision pertains to the prohibition of discrimination and harassment by attorneys in relation to the practice of law. By Order filed November 21, 2017, the Court published the BPR and TBA's proposed amendment for public comment with a comment deadline of March 21, 2018."

"The Court has received in excess of four hundred (400) pages of comments to the proposed amendment to Rule 8, RPC 8.4, from members of the bar, members of the public, and various organizations, including the Knoxville Bar Association and the Memphis Bar Association. The Court appreciates the interest of the bar and the public in this matter, as well as the comments received."

"The Court has carefully considered the BPR and TBA's proposed amendment, the comments received, including the points and issues raised therein, and this entire matter. Upon due consideration, the BPR and TBA's petition to adopt a new Rule 8, RPC 8.4(g) is respectfully DENIED. It is so ORDERED."

Law Reviews. Actions from the Board of Professional Responsibility, 36 No. 3 Tenn. B.J. 8 (2000).

Attorney Liability: Is This The New Twilight?, 27 U. Mem. L. Rev. 13 (1996).

Conflicts of Interest and Imputed Disqualification: The Chinese Wall in Tennessee (Charles W. Bone & Keith C. Dennon), 25 No.3 Tenn. B.J. 24 (1989).

Criminal Contempt, Jury Trial, Private Prosecutors & Child Support, (Clarke Lee Shaw), 34 No. 4 Tenn. B.J. 22 (1998).

Deceptive Negotiating and High-Toned Morality (Walter W. Steele, Jr.), 39 Vand. L. Rev. 1387 (1986).

Ethical Issues Facing Lawyer-Spouses and Their Employers, 35 Vand. L. Rev. 1435.

Public Opinion of the Legal Profession — A Necessary Response by the Bar and the Law School (Friedrich H. Thomforde, Jr.), III Suggested Responses of the Profession to Public Opinion, 41 Tenn. L. Rev. 512.

Spoilation in the Product Liability Context, 27 U. Mem. L. Rev. 663 (1997).

The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care, 28 U. Mem. L. Rev. 57 (1997).

Disciplinary Board Opinions. It is improper for an attorney to divide his fee with his client. Formal Ethics Opinion 81-F-6 (5/12/81).

An attorney must disclose the intent to record a conversation during a discovery deposition without divulging his reasons or purposes unless inquiry is made by the recorded party. Formal Ethics Opinion 81-F-14 (7/23/81).

An attorney or his firm is prohibited from accepting employment in any matter upon the merits of which he or a member of his firm has acted in a judicial capacity. Formal Ethics Opinion 81-F-15 (8/26/81).

Members of a firm serving as general counsel for the Tennessee Law Enforcement Officers Association are not disqualified from engaging in the practice of criminal law. Formal Ethics Opinion 81-F-18 (8/26/81).

It is not improper for an attorney to send demand letters and copies of excess letters to adverse parties before suit is filed and before adverse party is represented by counsel. Formal Ethics Opinion 81-F-22 (11/20/81).

It is improper for a city attorney to defend a person being prosecuted in criminal court by the city police department. Formal Ethics Opinion 81-F-23 (12/31/81).

Disciplinary counsel interrogation of respondent's family and associates. Formal Ethics Opinion 82-F-29 (6/18/82).

An attorney may not bring a class action to recover wrongful assessment of court costs in juvenile court when he sat as special juvenile judge on limited occasions and wrongfully assessed such costs. Formal Ethics Opinion 82-F-32 (6/18/82).

A local bar association is not prohibited from conducting a bar poll. Formal Ethics Opinion 82-F-33 (10/18/82).

Prejudice to client by reporting ethics violation. Formal Ethics Opinion 84-F-69 (4/12/84).

Any communication by an attorney with an adverse party by subterfuge without the knowledge and consent of the adverse party is prohibited. Formal Ethics Opinion 85-F-89 (3/13/85).

Employment of lawyers admitted to practice in other jurisdictions but not admitted to practice in Tennessee. Formal Ethics Opinion 85-F-91 (4/29/85).

A lay employee is prohibited from appearing at docket calls on behalf of the attorney. Formal Ethics Opinion 85-F-94 (5/6/85).

Lawyer's ethical duties when there is a dispute between the client and a third party concerning the right to funds held by the lawyer on behalf of the client. Formal Ethics Opinion 87-F-109 (9/16/87).

Responsibility of an attorney when his/her client has committed perjury. Formal Ethics Opinion 93-F-133 (12/10/93).

A lawyer's employment by an estate planning company specializing in selling living trusts would violate the Code of Professional Responsibility. Formal Ethics Opinion 95-F-139 (3/8/96).

An attorney may prepare pleadings for a pro se litigant without disclosing the name of the attorney on the pleading in circumstances where doing so allows the pro se litigant to protect his or her claim or matter from being barred by a statute of limitation, administrative rule or other proscriptive rule where the assisting attorney will not provide further assistance. Formal Ethics Opinion No. 2007-F-153 (3/23/07).

Attorney General Opinions. If Tennessee were to adopt the American Bar Association's new Model Rule 8.4(g), or the version of it currently being considered in Tennessee, Tennessee's adoption of that new Rule would violate the constitutional rights of Tennessee attorneys and conflict with the existing Rules of Professional Conduct. OAG 18-11, 2018 Tenn. AG LEXIS 9 (3/16/2018).

NOTES TO DECISIONS

ANALYSIS

1. Improper Conduct.
2. Disbarment.
3. Appropriate Sanction.
4. Criminal Conduct.
5. No Violation.
6. Suspension.
7. Abuse of the Court.

1. Improper Conduct.

Record contained substantial and material evidence that supported the hearing panel's findings that an attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3, 1.4(a) and (b), 3.2, and 8.4(a), and (d) because the court of appeals dismissed the appeal of a case the attorney initiated on behalf of a client for failure to file a timely brief and failure to comply with its previous orders; the client testified that the attorney failed to communicate with her about the appeal and that she only learned the appeal had been dismissed when she contacted the appellate court clerk's office to check on the status of the case. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Record contained substantial and material evidence that supported the hearing panel's findings that an attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.4(a) and (b) and 8.4(a), and (d) because the attorney admitted that he had initially informed a client that he would submit a filing on his behalf by a certain date but failed to do so until two days later; the client testified that the attorney failed to com-

municate with him about the case and failed to meet with him as agreed to prepare for a deposition. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. Prof. Conduct 8, 1.15(a), 1.16, 8.4, and 1.4(a) was supported by substantial and material evidence because the attorney and his client gave conflicting testimony on whether the written fee agreement was subsequently modified by an oral agreement that permitted the attorney to treat \$7,500 as an earned fee and the hearing panel credited the client's version of events. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

Panel did not act arbitrarily in determining that the attorney violated the professional conduct rules, as his failure to take any action in response to a client's safe harbor letter, motion to dismiss, and motion for sanctions was neglectful, unprofessional, and exposed his client to the possibility of sanctions, and thus the attorney violated the duty of diligence. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Decision of a hearing panel of the Board of Professional Responsibility that an attorney's statements pejorative statements in motions to recuse three appellate judges violated the rule was supported by material and substantial evidence because the in-court statements were not protected by the First Amendment; the objective "reasonable attorney" standard was

the appropriate standard to apply in a disciplinary proceeding involving an attorney's in-court speech. *Bd. of Prof'l Responsibility v. Parrish*, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. 8, DR 5.5(a) and 8.4(d) when he failed to follow the Mississippi rules in gaining pro hac vice admission was supported by substantial evidence where the trial court's error authorizing the attorney's pro hac vice admission did not remedy his noncompliance with Mississippi's rules for such admission. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

Hearing panel's finding that the attorney violated Tenn. Sup. Ct. R. 8, DR 1.4 and 8.4(a) in handling another client's case was supported by substantial evidence where the unrefuted proof showed he failed to inform the client about how a default judgment was set aside, and there was no proof that the client had obtained the default judgment fraudulently. *Green v. Bd. of Prof'l Responsibility of the Supreme Court*, 567 S.W.3d 700, 2019 Tenn. LEXIS 16 (Tenn. Jan. 24, 2019).

Ample substantial and material evidence supported the Board of Professional Responsibility Hearing Panel's findings that a lawyer had violated the Rules of Professional Conduct because the lawyer claimed a paralegal's work as his own; an itemization of fees and costs included entries purporting to describe the lawyer's work on a case that were either identical or nearly identical to entries on the paralegal's invoices that described his work on the case. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Attorney's false statements to an administrative law judge about the status of federal litigation involved dishonesty because the attorney's attempts to intimidate the judge and to coerce her to delay the administrative appeal and grant his client a Certificate of Need without a hearing suggested a course of conduct that ran contrary to the judicial function of deciding issues impartially on their merits. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supports the Board of Professional Responsibility hearing panel's conclusion that an attorney's unfounded and disparaging characterizations expressed contempt for an administrative law judge and the tribunal because he cast the judge as a possible "fixer" that would be "aiding and abetting" opposing parties; the attorney's

conduct breached his obligation to demonstrate respect for the law and legal institutions. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information about a federal case because the attorney never disclosed that the case had been dismissed; the federal court's dismissal of the case was relevant and material information that the attorney should have disclosed to an administrative law judge in the multiple conference calls about an administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supports the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information to an administrative law judge because his representation that he intended to ask a federal court to stay an administrative appeal ran contrary to the federal court's previous ruling on the issue; ultimately, the attorney did not produce a federal court filing that requested a stay of the administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's decision that an attorney's failure to disclose material information violated subsection (c) because the attorney failed to disclose to an administrative law judge material facts from federal litigation known to him; in doing so, the attorney violated his duty of candor to the tribunal and engaged in dishonest conduct. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

In his professional capacity, the lawyer offered specific legal advice via social media on how to orchestrate a killing in a way calculated to provide a fabricated defense to criminal charges, then directed the author of the post to delete the comment thread; ample evidence supported the hearing panel's conclusion that the lawyer violated Tenn. Sup. Ct. R. Prof. Conduct 8, 8.4(a), (d). *In re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

2. Disbarment.

Hearing panel's decision to impose disbarment for an attorney's violation of Tenn. Sup. Ct. R. Prof. Conduct 8, 1.3, 1.4(a) and (b), 3.2, and 8.4(a), and (d) was not arbitrary, capricious, or characterized by an abuse of discretion because on multiple occasions the attorney knowingly failed to perform services for his clients and violated his professional duties,

which caused serious or potentially serious injuries to his clients and the legal system; the panel properly found multiple aggravating factors warranting disbarment, including the attorney's substantial experience practicing law, his commission of multiple offenses in violation of numerous disciplinary rules, his pattern of misconduct, his failure to acknowledge wrongdoing, and his incompetence. *Hoover v. Bd. of Prof'l Responsibility*, 395 S.W.3d 95, 2012 Tenn. LEXIS 811 (Tenn. Nov. 16, 2012).

Disbarment of an attorney was appropriate because the attorney: (1) failed to maintain sufficient funds in the attorney's trust account to cover the attorney's obligations to clients; (2) failed to act with reasonable diligence and promptness in disbursing settlement proceeds; (3) failed to have written attorney fee agreements signed by clients; (4) did not keep a client's funds separate from the attorney's operating funds; and (5) failed to respond to the Tennessee Board of Professional Responsibility after complaints were filed. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers's misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

3. Appropriate Sanction.

There was clear and convincing evidence that: (1) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.1 and acted in an unprofessional and unethical manner by continuing to argue prosecutorial misconduct although, after a reasonable inquiry, the attorney should have known there was no basis to do so; (2) The attorney violated Tenn. Sup. Ct. R. 8, RPC 3.3 and acted in an unprofessional and unethical manner by knowingly making a false statement of fact to a tribunal; (3) The attorney violated Tenn. Sup. Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (4) The attorney violated Tenn. Sup. Ct. R. 8, RPC 8.4 and acted in an unprofessional and unethical manner by engaging in conduct that was prejudicial to the administration of justice; because the attorney

had been honest and truthful throughout the disciplinary process, he had not misrepresented the nature of the misconduct nor his actions before a magistrate judge, he had been forthcoming and repentant, and he had exhibited heartfelt and genuine remorse, a public admonition was an appropriate sanction. *In re Bell*, 713 F. Supp. 2d 717, 2010 U.S. Dist. LEXIS 57019 (E.D. Tenn. Apr. 9, 2010).

One-year suspension of an immigration lawyer's license was upheld where the evidence showed that he abandoned the balance between zealously representing his clients and the rules of professional conduct; he exploited a procedural mechanism to file eighteen frivolous appeals, he failed to file an appeal in another case and failed to inform his client in writing of his neglect, he failed to prosecute the appeals that he did file, letting them be dismissed, he used a worthless check drawn on an unapproved trust account to reimburse one client for his unearned attorney's fee, he tendered worthless checks to a federal court, he continued to practice law while his law license was suspended, and he failed to notify his clients and the courts before which he practiced that he had been suspended. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Record contained ample evidence of injury or potential injury, as the attorney's conduct in all three cases caused potential injury to his clients; the attorney admitted receiving multiple orders requesting status updates and establishing filing deadlines, he ignored each order, and his actions caused both injury and potential injury to the legal system, and the 30 days' active suspension reflected the consideration of the attorney's mitigating circumstances and was not an abuse of discretion. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

Given the findings that an attorney intentionally committed serious criminal conduct the Hearing Panel of the Board of Professional Responsibility was correct in identifying the American Bar Association Standards for Imposing Lawyer Sanctions as an appropriate guidepost for selecting the presumptive sanction; the hearing panel also found that the attorney acted intentionally to conceal transactions from his partners even though he believed he was entitled to those funds. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

4. Criminal Conduct.

Despite being ordered first to be quiet and then to not say another word and after being

warned of the consequences of such action, a lawyer interrupted a judge again in direct violation of the court's order; this violated Tenn. Sup. Ct. R. 8, § 8.4, as it was a criminal offense that took place in court during a court proceeding and reflected adversely on the lawyer's fitness as a lawyer. In re Moncier, 550 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 53546 (E.D. Tenn. Apr. 29, 2008), *aff'd*, — F.3d —, 2009 FED App. 472N (6th Cir.), 329 Fed. Appx. 636, 2009 U.S. App. LEXIS 15093 (6th Cir. Tenn. 2009).

5. No Violation.

Finding that an attorney violated Tenn. Sup. Ct. R. 8, RPC 1.4(a) and (b) and 8.4(a), (c), and (d) as it related to the attorney's representation of one client was set aside as the attorney offered un rebutted testimony regarding language difficulties he had in communicating with the client as well as his own diligent maintenance of oral communication and consultation with the client through the client's own interpreter. Disciplinary counsel failed to address what constituted reasonable communication with non-English speaking clients from cultures without written languages or non-literate clients. *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 2010 Tenn. LEXIS 542 (Tenn. June 4, 2010).

Hearing panel's conclusion that an attorney was not to be disciplined for adding a conformed signature of an opposing party by typewriter to a letter and later submitting the letter as an exhibit to a client's affidavit was not arbitrary because the panel had a reasonable basis to conclude that the attorney added the conformed signature with a good faith belief based upon the client's representations that there was a signed original and that the attorney's addition did not constitute falsifying evidence. *Bd. of Prof'l Responsibility v. MacDonald*, 595 S.W.3d 170, 2020 Tenn. LEXIS 66 (Tenn. Feb. 14, 2020).

6. Suspension.

Chancery court improperly substituted its judgment for that of the hearing panel regarding the weight of the evidence because substantial and material evidence supported the hearing panel's finding that an attorney's behavior warranted suspension; the proof supported the hearing panel's finding that the attorney's conduct caused interference with a legal proceeding and actual or potential injury to the clients or parties, and the length of the suspension was appropriately tailored to the facts. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

Certain standards applied to the facts of the attorney's case, and he had been sanctioned seven times since 1991, including probation which was conditioned on him not engaging in conduct that violated the professional conduct rules, but less than five months later, he did so by engaging in an unacceptable pattern of ne-

glect; suspension for 45 days was proper, not an arbitrary application of the rule, and the penalty was supported by substantial evidence. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

trial court properly affirmed the decision of a hearing panel of the Board of Professional Responsibility, which determined that an attorney had to be suspended, because the attorney's conduct of representing two clients with conflicting interests was egregious; the attorney continued to represent the clients, ignoring the orders of the chancery court and the court of appeals and the public censure. *Cody v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 471 S.W.3d 420, 2015 Tenn. LEXIS 584 (Tenn. July 27, 2015).

Suspension, not a reprimand as imposed by the hearing panel, was the appropriate sanction for the attorney's failure to file a delayed notice of appeal for three and a half years, particularly given the attorney's prior disciplinary history, including multiple offenses, the vulnerability of the victim, and the attorney's substantial experience in the practice of law. In re Walwyn, 531 S.W.3d 131, 2017 Tenn. LEXIS 457 (Tenn. Aug. 4, 2017).

Hearing panel acted arbitrarily and capriciously in finding that a public censure was warranted because an attorney made pejorative statements in motions to recuse three appellate judges knowingly, not negligently; therefore, ABA Standard for Imposing Lawyer Sanctions 6.12 applied, and the presumptive sanction was suspension, not reprimand. *Bd. of Prof'l Responsibility v. Parrish*, 556 S.W.3d 153, 2018 Tenn. LEXIS 404 (Tenn. Aug. 14, 2018), cert. denied, 203 L. Ed. 2d 207, 139 S. Ct. 1216, — U.S. —, 2019 U.S. LEXIS 858 (U.S. Feb. 19, 2019).

Hearing panel's findings of fact and conclusions of law supported suspension as the presumptive sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions because the attorney failed to disclose material facts to an administrative law judge, and threatened the judge to coerce action favorable to his client, and made disparaging descriptions of the judge and the tribunal; his conduct impeded a resolution, which was prejudicial to the administration of justice. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Lawyer's social media advice, how to orchestrate a killing in a way to provide a fabricated defense to criminal charges, was clearly prejudicial to the administration of justice, and the act of posting the comments on social media was deemed an aggravating factor that justified an increase in discipline; the court modified the hearing panel's judgment to impose a four-year suspension from the practice of law, with

one year to be served on active suspension and the remainder on probation. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Although the lawyer did not make any false statements himself and did not necessarily urge the author of the social media post to commit a crime and falsify a defense, his post gave her the tools to use deadly force against her ex-boyfriend if she chose to, in a way calculated to make it appear to be self-defense; suspension rather than disbarment was the appropriate presumptive sanction in this case. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

7. Abuse of the Court.

Simply abusing or insulting the court to get rulings in favor of a client cannot ever be endorsed or justified, and it is especially important that attorneys, who play an integral role in the judicial system, respect the line separating tolerable criticism from unacceptable speech; attorneys who cross this line may not avoid punishment by claiming that their misconduct served the greater good or the interests of their clients, as such exceptions would overwhelm the rules. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

Rule 8.5. Disciplinary Authority; Choice of Law. —

(a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

Comment.

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Tenn. Sup. Ct. R. 9, § 8 ("Jurisdiction") and § 25 ("Reciprocity Discipline").

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's

conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (1) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (2) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

[4] Paragraph (b)(1) provides that, as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet

pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[6] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Definitional Cross-References

"Tribunal" See RPC 1.0(m)

Compiler's Notes. In its order filed March 6, 2017, the Supreme Court provided: "On July 11, 2016, the Tennessee Bar Association ("TBA") filed a petition asking the Court to

amend Rule 8 of the Rules of the Tennessee Supreme Court. In summary, the TBA proposed to amend selected portions of Rule 8 in light of similar revisions to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA's House of Delegates in August 2012. In addition, the TBA also proposed a number of housekeeping amendments to Rule 8."

"On August 18, 2016, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was November 17, 2016. The Court received written comments during the comment period from the Board of Professional Responsibility ("BPR") and the Knoxville Bar Association ("KBA"). The KBA's written comments stated it approved of the TBA's petition and the amendments proposed therein. The BPR's written comments specifically addressed certain proposed amendments and otherwise approved of the proposed changes to Tennessee Supreme Court Rule 8. The TBA then filed a response to the BPR's comments, noting whether it agreed with each of the BPR's written comments. The Court thanks the TBA, BPR, and KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 8 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

NOTES TO DECISIONS

1. Generally.

Attorney who sent a derogatory e-mail to a federal bankruptcy judge was subject to the Supreme Court of Tennessee's disciplinary authority, regardless of the fact that the attorney's conduct occurred in a federal bankruptcy

court, because Fed. R. Bankr. P. 9003(a) was not a substitute for or limitation of Tenn. Sup. Ct. R. Prof. Conduct 8, 8.5. *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

Rule 9. Disciplinary enforcement.

Compiler's Notes. These rules, effective January 1, 2014, supersede the previously adopted Tenn. Sup. Ct. R. 9, that became effective March 1, 2006.

Law Reviews. A Guided Tour of New Tennessee Supreme Court Rule 9, 50 Tenn. B.J. 22 (2014).

Section 1. Preamble

The license to practice law in this State is a continuing proclamation by the Supreme Court of the State of Tennessee (hereinafter the "Court") that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to act at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

NOTES TO DECISIONS

ANALYSIS

- 1. Constitutionality.
- 2. Social Media.

1. Constitutionality.

Under Tennessee’s system, the investigation/enforcement function is separate from the adjudicative function, and the ultimate power of review is held by the Supreme Court of Tennessee. Consistent with Varallo, Withrow, and other cases, the court holds that Tenn. Sup. Ct. R. 9 is not facially unconstitutional on the ground that it combines investigatory, enforce-

ment, and adjudicative functions in the Board. Long v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn., 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

2. Social Media.

There is nothing wrong with lawyers participating in social media, but attorneys in any setting, including on social media platforms, remain bound by the Tennessee Rules of Professional Conduct; lawyers who choose to post on social media must realize they are handling live ammunition, and doing so requires care and judgment. In re Sitton, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Section 2. Definitions

Board:

The Board of Professional Responsibility of the Supreme Court of Tennessee.

Complainant:

A person who alleges misconduct by an attorney, including misconduct by Disciplinary Counsel and attorney members of the Board and members of the district committees.

Court:

The Supreme Court of Tennessee.

Declaration under Penalty of Perjury:

A declaration under penalty of perjury meeting the requirements of Tenn. R. Civ. P. 72.

Disciplinary Counsel:

The Chief Disciplinary Counsel selected by the Court and staff Disciplinary Counsel employed by the Chief Disciplinary Counsel, with the approval of the Board, pursuant to the provisions of this Rule.

District committees:

Committees of attorneys appointed by the Court pursuant to provisions of this Rule.

Hearing panels:

Panels of three district committee members selected by the Chair of the Board, or in the absence of the Chair selected by the Vice-Chair of the Board, to hear matters pursuant to provisions of this Rule.

Panel:

A panel of three members selected by the Chair of the Board, or, in the Chair’s absence, the Vice-Chair. At least two of the members of the panel shall be members of the Board, only one of whom may be a non-lawyer; and, one of the members of the panel may be a district committee member from the same disciplinary district as the respondent or petitioning attorney.

Practice monitor:

An attorney licensed to practice law in the State of Tennessee designated by the Board to supervise an attorney as a condition of public discipline, probation or reinstatement pursuant to the provisions of this Rule.

Protocol memorandum:

A memorandum prepared by Disciplinary Counsel and provided to the Court

pursuant to the provisions of this Rule which addresses the following: 1) The basis for the Petition for Discipline; 2) The proposed disposition; 3) The procedural history; 4) The prior history of discipline; and, 5) The reasons for the proposed discipline, including: a) application of the ABA Standards for Imposing Lawyer Sanctions; b) comparative Tennessee discipline in similar cases; and, c) aggravating and mitigating circumstances of the kind and character set forth in the ABA Standards for Imposing Lawyer Sanctions.

Retired:

For purposes of this Rule, an attorney is “retired” if the attorney is at least sixty-five years of age and is not actively engaged in the practice of law; or, the attorney is at least fifty years of age, is inactive with the Tennessee Commission on Continuing Legal Education and Specialization, and has not engaged in the practice of law for at least fifteen years.

RPC:

The Rules of Professional Conduct as adopted by Rule 8 of the Rules of the Tennessee Supreme Court.

Rule:

Rule 9 of the Rules of the Tennessee Supreme Court.

Section:

A section of Rule 9 of the Rules of the Tennessee Supreme Court.

Serious crime:

The term “serious crime” as used in Section 22 of this Rule shall include any felony and any other crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, willful tax evasion, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”

Serve or service:

The method of serving pleadings or other papers as specified in Section 18 of this Rule or otherwise in the provisions of this Rule.

Section 3. Disciplinary Districts

Disciplinary jurisdiction in this State shall be divided into the following districts:

District I — the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblen and Sevier.

District II — the counties of Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott.

District III — the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

District IV — the counties of White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

District V — the county of Davidson.

District VI — the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner and Williamson.

District VII — the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Decatur, Chester, Fayette, McNairy and Madison.

District VIII — the counties of Weakley, Lake, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale.

District IX — the county of Shelby.

Section 4. The Board of Professional Responsibility of the Supreme Court of Tennessee

4.1. The Court shall appoint a twelve member Board to be known as “The Board of Professional Responsibility of the Supreme Court of Tennessee” (hereinafter the “Board”) which shall consist of:

(a) Three resident attorneys admitted to practice in this state and one public (non-attorney) member appointed for an initial term of three years; and

(b) Three resident attorneys admitted to practice in this state and one public member appointed for an initial term of two years; and

(c) Three resident attorneys admitted to practice in this state and one public member appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. A member may serve a maximum of any remaining portion of a three-year term created by a vacancy filled by such member, plus two consecutive three-year terms. A member who has served the maximum term shall be eligible for reappointment after the expiration of three years. Vacancies shall be filled by the Court. There shall be one attorney member from each disciplinary district. There shall be one public member from each of the three grand divisions of the state.

4.2. The Court shall designate one member as Chair of the Board and another member as Vice-Chair.

4.3. Seven members of the Board shall constitute a quorum. Unless otherwise permitted by this Rule, an affirmative vote of seven members of the Board shall be necessary to authorize any action. If time restraints are such that a regular or special meeting of the Board is impractical, Disciplinary Counsel shall circulate to the members of the Board in writing the reasons for the recommendation of a particular action supported by a factual report. Board members may communicate their vote for or against the recommendation by telephone, facsimile, regular mail, or electronic means. Any member of the Board may request that Disciplinary Counsel convene a telephone conference of the Board, whereupon such conference must be convened with at least a quorum so conferring.

4.4. Members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties in accordance with the schedule for judicial reimbursement promulgated by the Administrative Office of the Courts.

4.5. The Board shall exercise the powers conferred upon it by this Rule, including the power:

(a) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of this Rule. The Board is authorized to investigate information from a source other than a signed written complaint if the Board deems the information sufficiently credible or verifiable through objective means.

(b) To adopt written internal operating procedures to ensure the efficient and timely resolution of complaints, investigations, and formal proceedings, which operating procedures shall be approved by the Court, and to monitor Disciplinary Counsel's and the hearing panels' continuing compliance with those operating procedures. The Board shall quarterly send to each Member of the Court and shall post on the Board's website a report demonstrating substantial compliance with the operating procedures.

(c) The powers and duties set forth in this Section are not duties owed to or enforceable by a respondent or petitioning attorney by means of claim, or defense, or otherwise.

(d) To review, upon application by Disciplinary Counsel, a determination by the reviewing member of a district committee that a matter should be concluded by dismissal or by private informal admonition without the institution of formal charges.

(e) To privately reprimand, publicly censure or authorize the filing of formal charges against attorneys for misconduct.

(f) To delegate to a committee of its members, or to the Chief Disciplinary Counsel, any administrative, non-adjudicatory function authorized by this Rule.

4.6. A Board member shall not undertake or participate in any adjudicative function when doing so would violate either federal or Tennessee constitutional due process requirements for administrative adjudications. See Withrow v. Larkin, 421 U.S. 35 (1975); Moncier v. Board of Professional Responsibility, ___ S.W.3d ___, 2013 WL 2285183 (Tenn. 2013). The procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to motions to disqualify or for recusal in matters under this Rule.

Section 5. Ethics Opinions

5.1. The Board shall be responsible for issuing ethics opinions from time to time. The Board may, in its discretion, accomplish this by dividing itself into three geographic ethics committees.

5.2. In performing its responsibility under Section 5.1, the Board shall act under rules which the Board may from time to time promulgate, including rules relating to the procedures to be used in considering inquiries and expressing opinions, clarifying opinions or declining requests for opinions.

5.3. In performing its responsibilities under Section 5.1, the Board shall exercise the powers and perform the ordinary and necessary duties usually

carried out by ethics advisory bodies. The Board shall:

(a) By the concurrence of a majority of its members, or of the members of any committees established by the Board pursuant to Section 5.1, issue and distribute Formal Ethics Opinions on proper professional conduct, either on the Board's own initiative or when requested to do so by a member of the bar or by an officer or a committee or any other state or local bar association, except that an opinion may not be issued in a matter that is known to the Board to be pending before a court or in a pending disciplinary proceeding;

(b) Periodically distribute its issued Formal Ethics Opinions to the legal profession in summary or complete form;

(c) On request, advise or otherwise help any state or local bar associations in their activities relating to the interpretation of the Rules of Professional Conduct;

(d) Recommend appropriate amendments to or clarification of the Rules of Professional Conduct, if it considers them advisable.

5.4.

(a) A Formal Ethics Opinion issued and distributed by the Board shall bind the Board and the person requesting the opinion and shall constitute a body of principles and objectives upon which members of the bar may rely for guidance in many specific situations.

(b) Requests for Formal Ethics Opinions shall be addressed to the Board in writing, shall state the factual situation in detail, shall be accompanied by a short brief or memorandum citing the Rules of Court or Professional Conduct involved and any other pertinent authorities, and shall contain a certification that the matters are not pending in any court or disciplinary proceeding.

(c) An advisory ethics opinion may be issued by Disciplinary Counsel when there is readily available precedent. The advisory opinion shall not be binding on the Board and shall offer no security to the person requesting it. All requests for advisory opinions, oral and written, and any response by Disciplinary Counsel shall be confidential and shall not be public records or open for public inspection except as subject to waiver by the requesting attorney or as otherwise provided in Section 32. [Amended by order filed October 6, 2015 and effective October 6, 2015]

Compiler's Notes. In its order filed October 6, 2015, the Supreme Court provided that: "On June 18, 2015, the Board of Professional Responsibility of the Supreme Court of Tennessee (the 'Board') filed a petition asking the Court to amend Rule 9, section 5.4(c) of the Rules of the Tennessee Supreme Court to specifically provide confidentiality for attorneys' ethics inquiries to the Board and for the Board's responses to those inquiries. By Order filed June 23, 2015, the Court solicited public comments on the Board's proposed amendment. The Court has received and considered public comments, in-

cluding comments from the Tennessee Bar Association and the Knoxville Bar Association, as well as the Board's response to the Comments of the Tennessee Bar Association. After due consideration, the Court hereby adopts the amendment to Rule 9, section 5.4(c) of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. This amendment shall take effect immediately upon the filing of this Order." The amendment deleted "orally" following "Disciplinary Counsel" in the first sentence of (c) and added the last sentence.

Section 6. District Committees

6.1. The Court shall appoint one district committee within each disciplinary district. Each district committee shall consist of not fewer than five members of the bar of this state who maintain an office for the practice of law within that district or, if not actively engaged in the practice of law, reside within that district. Members of district committees may be recommended by the Board, or by the president or board of directors of any local bar associations in each district.

6.2. Terms of members of each district committee shall be for three years, and such terms shall be staggered so that one third of the members rotate off the committee each year; provided that shorter terms may be designated where necessary to observe the above rotation practice. A member may serve a maximum of two consecutive three-year terms. Members whose terms have expired shall continue to serve with respect to any formal hearing commenced prior to the expiration of their terms until the conclusion of such hearing, regardless of whether their successors have been appointed. A member who has served the maximum term may be reappointed after the expiration of one year.

6.3. A member of the district committee acting as the reviewing member shall approve or modify recommendations by Disciplinary Counsel for dismissals and private informal admonitions. In no event may a member of the district committee acting as the reviewing member impose a sanction greater than private informal admonition. Nor may a district committee member acting as the reviewing member offer diversion except as provided in Section 13.4.

6.4. Formal hearings upon charges of misconduct shall be conducted by a hearing panel consisting of three district committee members selected by the Chair of the Board, or in the absence of the Chair by the Vice-Chair of the Board, pursuant to Section 15.2. The hearing panel shall submit its findings and judgment to the Board. Each hearing panel shall elect its own Chair. The hearing panel shall act only with the concurrence of a majority of its members.

NOTES TO DECISIONS

1. Hearing Panel.

There was no error in the manner in which Board of Professional Responsibility Hearing Panel members were selected nor any unlawful procedure; no substantial right is implicated by

the use of a “random” selection process as opposed to a “rotating” process, and no meaningful difference exists between the two. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

6.5. A district committee member shall not take part in any matter in which a judge, similarly situated, would have to recuse himself or herself in accordance with Tenn. Sup. Ct. R. 10. However, the procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to motions to disqualify or for recusal in matters under this Rule.

Section 7. Disciplinary Counsel

7.1. The Court shall appoint an attorney admitted to practice in the State to serve as Chief Disciplinary Counsel, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the Chief Disciplinary Counsel shall report to the Board, which shall conduct performance evaluations of the Chief Disciplinary Counsel every two years and shall report such evaluations to the Court. Neither the Chief Disciplinary Counsel nor full-time staff Disciplinary Counsel shall engage in the private practice of law; however, the Board and the Court may agree to a reasonable period of transition after appointment.

7.2. Chief Disciplinary Counsel shall have the power with the approval of the Board:

(a) To employ and supervise staff needed for the performance of Disciplinary Counsel's functions.

(b) To perform any administrative, non-adjudicatory function authorized by this Rule and delegated by the Board.

7.3. Disciplinary Counsel shall have the power:

(a) To investigate all matters involving possible misconduct.

(b) To dispose of all matters involving alleged misconduct by recommendation to the reviewing district committee member of either dismissal or private informal admonition; by recommendation to the Board of either private reprimand, public censure or the prosecution of formal charges before a hearing panel; or, by diversion in accordance with Section 13. Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney shall have been afforded the opportunity to state a position with respect to the allegations against the attorney.

(c) To present in a timely manner all disciplinary proceedings.

(d) To investigate and to present in a timely manner all proceedings with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, or with respect to petitions for voluntary surrenders of law licenses.

(e) To file with the Court adequate proof of attorneys' pleas of nolo contendere or pleas of guilty to, or verdicts of guilt of, crimes pursuant to Section 22.

(f) To maintain permanent records of all matters processed and the disposition thereof.

(g) To give advisory ethics opinions to members of the bar pursuant to Section 5.

(h) To implement the written internal operating procedures adopted by the Board and approved by the Court pursuant to Section 4.5(b), and to file reports with the Board on a quarterly basis demonstrating Disciplinary Counsel's substantial compliance with the operating procedures.

Section 8. Jurisdiction

8.1. Any attorney admitted to practice law in this State, including any formerly admitted attorney with respect to acts committed prior to surrender of a law license, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of this Rule or of the Rules of Professional Conduct, and any attorney specially admitted by a court of this State for a particular proceeding, is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and hearing panels herein established, and the circuit and chancery courts of this State. Attorneys not admitted or specially admitted to practice law in this State, attorneys who are suspended, and individuals who are disbarred or who have surrendered a law license, but who nevertheless engage in the practice of law in this State shall be subject to the imposition of civil remedies and criminal prosecution pursuant to Tenn. Code Ann. § 23-3-103. Disciplinary Counsel shall refer such attorney or individual to the appropriate authorities for investigation and pursuit of civil remedies and/or criminal prosecution. [Amended by order filed and effective January 23, 2020.]

Compiler's Notes. In its order dated January 23, 2020, the Supreme court provided that, "On September 18, 2019, the Court entered an order soliciting public comments for proposed amendments to Tennessee Supreme Court Rule 9, sections 8, 12, and 30. The deadline for submitting written comments was December 17, 2019. The Court received written comments during the comment period from the Tennessee Bar Association ("TBA"), the Knoxville Bar As-

sociation ("KBA"), the Board of Professional Responsibility ("BPR"), David Steele, Esq., and Elliott J. Schuchardt, Esq.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 8, 12 and 30, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

8.2. Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring, suspending or expelling its members from membership.

NOTES TO DECISIONS

ANALYSIS

1. Suspension.
2. Preponderance of Evidence.
3. Hearing Panel.
4. Filing of Pleading by Suspended Attorney.

1. Suspension.

Chancery court improperly substituted its judgment for that of the hearing panel regarding the weight of the evidence because substantial and material evidence supported the hearing panel's finding that an attorney's behavior warranted suspension; the proof supported the hearing panel's finding that the attorney's con-

duct caused interference with a legal proceeding and actual or potential injury to the clients or parties, and the length of the suspension was appropriately tailored to the facts. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

2. Preponderance of Evidence.

Although the majority of other states utilize the clear-and-convincing standard of proof, use of the preponderance-of-evidence standard did not deprive the attorney of his right to due process, and even if the clear-and-convincing standard applied, the overwhelming proof contained in the record would have satisfied that standard; the Tennessee Supreme Court reaffirms its holding that the Tennessee attorney

disciplinary system comports with due process. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

3. Hearing Panel.

There was no error in the manner in which Board of Professional Responsibility Hearing Panel members were selected nor any unlawful procedure; no substantial right is implicated by the use of a “random” selection process as

opposed to a “rotating” process, and no meaningful difference exists between the two. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

4. Filing of Pleading by Suspended Attorney.

Tenn. Sup. Ct. R. 9, § 8.2 does not suggest that a trial court enforcing Tenn. Sup. Ct. R. 9, § 10.9 must allow a suspended attorney to file pleadings if they pertain to the issue of contempt. *Pee Wee Wisdom Child Dev. Ctr., Inc. v. Slatery*, — S.W.3d —, 2019 Tenn. App. LEXIS 3 (Tenn. Ct. App. Jan. 3, 2019).

Section 9. Multijurisdictional Practice

9.1. Any attorney practicing in this State under the authority of RPC 5.5(c) or (d) or otherwise subject to the Court’s disciplinary jurisdiction under RPC 8.5 is subject to the disciplinary jurisdiction prescribed in Section 8.1 of this Rule and the procedures for exercise of such jurisdiction prescribed in this Rule.

9.2. The authorization for practice granted in RPC 5.5(c) or (d) may be terminated or suspended. The grounds and processes for such termination shall be those provided in this Rule for disbarment; and the grounds and processes for such suspension shall be those provided in this Rule for suspension.

9.3. If an attorney is practicing in this State under authority of RPC 5.5(c), or if an attorney is practicing in this State under authority of RPC 5.5(d) and does not maintain an office in this State:

(a) Hearing panel and panel proceedings may occur in any disciplinary district in which the conduct that forms the basis of the complaint against the attorney occurred;

(b) Circuit or chancery court proceedings for appeal pursuant to Section 33 of this Rule shall occur as specified in Section 33.1(a) of this Rule; and,

(c) The Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of an unappealed final trial court judgment disbarring or suspending the attorney for any period of time.

9.4. The procedures and remedies for reciprocal discipline prescribed in Section 25 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1). Upon receipt of a certified copy of an order demonstrating that such an attorney has been disciplined in another jurisdiction, the Court shall employ the procedures prescribed in Sections 25.2 through 25.5.

9.5. The information filing, fee payment and other requirements and regulations prescribed in Section 10 of this Rule shall apply to attorneys practicing in this State under authority of RPC 5.5(d)(1).

Section 10. Periodic Assessment of Attorneys

10.1. Every attorney admitted to practice before this Court, except those exempt under Section 10.3(b) and (c), shall, on or before the first day of their birth month, file with the Board at its central office an annual registration statement on a form prescribed by the Board, setting forth the attorney's current residence, office, and email addresses, and such other information as the Board may direct. The attorney's residence address, cellular telephone number, home telephone number, and personal non-government issued e-mail address are confidential and not public records. If, however, (1) the attorney failed to provide an office address, office telephone number, or office e-mail address; or (2) the attorney listed the residence address, cellular telephone number or home telephone number, or personal non-government issued e-mail address as the attorney's office address, office telephone number, or office e-mail address respectively, then the attorney's nonpublic information of the same category shall no longer be subject to the protection afforded under this Rule. The attorney may designate the primary or preferred address for receipt of correspondence from the Board. In addition to such annual statement, every attorney shall file electronically with the Board through the Board's Attorney Portal as necessary a supplemental statement of any change in information previously submitted within thirty days of such change. [As amended by order filed February 14, 2014; by order filed December 3, 2014, effective immediately; amended by order filed April 20, 2020, effective immediately.]

10.2.

(a) Every attorney admitted to practice before the Court, except those exempt under Section 10.3, shall pay to the Board on or before the first day of the attorney's birth month an annual fee.

(b) All funds collected hereunder shall be deposited by the Board with the State Treasurer; all such funds, including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those funds shall be made by the Board only for the purpose of defraying the costs of disciplinary administration and enforcement of this Rule, and for such other related purposes as the Court may from time to time authorize or direct.

(c) The annual fee for each attorney shall be One Hundred Seventy Dollars (\$170), consisting of a One Hundred Forty Dollar (\$140) Board of Professional Responsibility annual registration fee, a Ten Dollar (\$10) annual fee due under Tenn. Sup. Ct. R. 25, Section 2.01(a) (Tennessee Lawyers' Fund for Client Protection), and a Twenty Dollar (\$20) annual fee due under Tenn. Sup. Ct. R. 33.01 C (Tennessee Lawyer Assistance Program), and shall be payable on or before the first day of the attorney's birth month, and a like sum each year thereafter until otherwise ordered by the Court. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional \$5 for processing.

(d) In connection with the payment of the annual fee, every attorney shall have the opportunity to make a financial contribution to support access-to-justice programs. Funds raised through optional contributions will be distributed to access-to-justice programs which provide direct legal services to low

income Tennesseans. [As amended by order filed March 31, 2015, effective July 1, 2015; amended by order filed April 20, 2020, effective immediately.]

10.3. Upon Application for status change pursuant to Section 10.7, there shall be exempted from the application of this rule:

(a) Attorneys who serve as a justice, judge, or magistrate judge of a court of the United States of America or who serve in any federal office in which the attorney is prohibited by federal law from engaging in the practice of law.

(b) Retired attorneys.

(c) Attorneys on active duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice law.

(e) Attorneys not engaged in the practice of law in Tennessee. The term “the practice of law” shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel, or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities, or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law. [As amended by order filed April 20, 2020, effective immediately.]

10.4. Within thirty days of completions of the required annual registration by an attorney in accordance with the provisions of Section 10.1, the Board, acting through Disciplinary Counsel, shall acknowledge receipt thereof, on a form prescribed by the Court in order to enable the attorney on request to demonstrate compliance with the requirements of Sections 10.1 and 10.2. [As amended by order filed April 20, 2020, effective immediately.]

10.5. The Board shall monthly compile lists of attorneys who have failed to timely file the annual registration statement required by Section 10.1 or have failed to timely pay the annual registration fee required by Section 10.2. The Board shall send to each attorney listed thereon an Annual Registration Fee/Statement Delinquency Notice (the “Notice”). The Notice shall state that the attorney has failed to timely complete the annual registration required by Tenn. Sup. Ct. R. 9, Section 10.1, or has failed to timely pay the annual registration fee required by Tenn. Sup. Ct. R. 9, Section 10.2, and that the attorney’s license therefore is subject to suspension pursuant to Tenn. Sup. Ct. R. 9, Section 10.6. The Notice shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney’s most recent registration statement filed pursuant to Section 10.1 or at the attorney’s last known address, and at the email addresses shown in the attorney’s most recent registration statement filed pursuant to Section 10.1. [As amended by order filed April 20, 2020, effective immediately.]

10.6.

(a) Each attorney to whom a Notice is sent pursuant to Section 10.5 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury with supporting documenta-

tion demonstrating that the attorney has paid the annual registration fee or has filed the annual registration statement, and has paid a delinquent compliance fee of One Hundred Dollars (\$100.00) to defray the Board's costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the annual registration fee or having timely filed the annual registration statement.

(b) Upon the expiration of thirty days from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Board that they had paid the delinquent annual registration fee or had filed the delinquent annual registration statement, and had paid the One Hundred Dollar (\$100.00) delinquent compliance fee; or, failed to demonstrate to the satisfaction of the Board that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court's filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent annual registration fee or files the delinquent annual registration statement, and pays the One Hundred Dollar (\$100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars (\$200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily suspending the license to practice law of each attorney listed in the Order. The suspension shall remain in effect until the attorney completes all delinquent registration requirements, pays the delinquent registration fees or files the delinquent registration statement, and pays the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel acting on its behalf, shall promptly submit to the Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the

date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. An attorney resolves a suspension within thirty days for purposes of Section 10.6(c) if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent annual registration fees or has filed the delinquent registration statement, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent registration fees or the date of the attorney's filing of the delinquent registration statement, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. [As amended by order filed April 20, 2020, effective immediately.]

10.7.

(a) An attorney who claims an exemption under Section 10.3 (a), (b), (d), or (e) shall file with the Board an application to assume inactive status and discontinue the practice of law in this state. In support of the application, the attorney shall file an affidavit or declaration under penalty of perjury stating that the attorney is not delinquent in paying the privilege tax imposed on attorneys by Tenn. Code Ann. § 67-4-1702, is not delinquent in meeting any of the reporting requirements imposed by Rules 9, 21, and 43, is not delinquent in the payment of any fees imposed by those rules, and is not delinquent in meeting the continuing legal education requirements imposed by Rule 21. The Board shall approve the application if the attorney qualifies to assume inactive status under Section 10.3 and is not delinquent in meeting any of the obligations set out in the preceding sentence. If it appears to the Board that the applicant is delinquent in meeting any of those obligations, the Board shall notify the applicant of the delinquency and shall deny the application unless, within ninety days after the date of the Board's notice, the applicant demonstrates to the Board's satisfaction that the delinquency has been resolved. Upon the date of the Board's written approval of the application, the attorney shall no longer be eligible to practice law in Tennessee. The Board shall act

promptly on applications to assume inactive status and shall notify the applicant in writing of the Board's action. If the Board denies an application to assume inactive status, the applicant may request the Court's administrative review by filing in the Nashville office of the Clerk of the Supreme Court a Petition for Review within thirty days of the Board's denial. The Court's review, if any, shall be conducted on the application, the supporting affidavit or declaration under penalty of perjury, and any other materials relied upon by the Board in reaching its decision.

(b) An attorney who assumes inactive status under an exemption granted by Section 10.3(a), (d), or (e) shall pay to the Board, on or before the first day of the attorney's birth month, an annual inactive-status fee in an amount equal to one half of the total annual fee set forth in Section 10.2(c) for each year the attorney remains inactive. Inactive attorneys who fail to timely pay the annual inactive fee and submit the registration form prescribed by the Board will be mailed a Delinquency Notice and will be subject to delinquent compliance fees and suspension as provided in Sections 10.5 and 10.6. If an attorney chooses to pay or submit annual registration by mail, rather than online, that attorney shall pay an additional \$5 for processing.

(c) An attorney who assumes inactive status under the exemption granted by Section 10.3 (e) and who is licensed to practice law in another jurisdiction shall not be eligible to provide any legal services in Tennessee pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(c) or (d). [As amended by order filed April 20, 2020, effective immediately.]

10.8.

(a) Upon the Board's written approval of an application to assume inactive status, the attorney shall be removed from the roll of those classified as active until and unless the attorney requests and is granted reinstatement to the active rolls.

(b) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for five years or less before the filing of a petition for reinstatement to active status shall not require an order of the Court or a reinstatement proceeding pursuant to Section 30.4. The attorney shall file with the Board a petition for reinstatement to active status. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

(c) Reinstatement following inactive status, other than reinstatement from disability inactive status pursuant to Section 27.7, which has continued for more than five years before the filing of a petition for reinstatement to active status shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court. The attorney shall file with the Court a petition for reinstatement to active status. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the

Reinstatement Order shall provide that the attorney’s reinstatement is effective as of the date of the attorney’s payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

10.9. The courts of this State are charged with the responsibility of insuring that no disbarred, suspended, or inactive attorney be permitted to file any document, paper or pleading or otherwise practice therein.

NOTES TO DECISIONS

1. Filing of Pleading by Suspended Attorney.

Tenn. Sup. Ct. R. 9, § 8.2 does not suggest that a trial court enforcing Tenn. Sup. Ct. R. 9, § 10.9 must allow a suspended attorney to file

pleadings if they pertain to the issue of contempt. *Pee Wee Wisdom Child Dev. Ctr., Inc. v. Slatery*, — S.W.3d —, 2019 Tenn. App. LEXIS 3 (Tenn. Ct. App. Jan. 3, 2019).

10.10.

(a) Every attorney who is required by Section 10.1 to file an annual registration statement with the Board is requested to also file a pro bono reporting statement, reporting the extent of the attorney’s pro bono legal services and activities during the previous calendar year. The pro bono reporting statement shall be in substantially the format provided in Appendix A hereto, and shall be provided to the attorney by the Board with the attorney’s annual registration statement.

(b) In reporting the extent of the attorney’s pro bono legal services and activities, the attorney is requested to state whether or not the attorney made any voluntary financial contributions pursuant to RPC 6.1(c), but the attorney need not disclose the amount of any such contributions.

(c) The Board may promulgate such forms, policies and procedures as may be necessary to implement this Section.

(d) The individual information provided by attorneys in the pro bono reporting statements filed pursuant to this Section shall be confidential and shall not be a public record, unless the attorney waives confidentiality on the reporting statement solely to be considered for recognition by the Tennessee Supreme Court for pro bono work the attorney completed in the previous calendar year. The Board shall not release any individual information contained in such statements, except as directed in writing by the Court or as required by law. The Board, however, may compile statistical data derived from the statements, which data shall not identify any individual attorney, and may release any such compilations to the public. [As amended by order filed March 31, 2015, effective July 1, 2015.]

Compiler’s Notes. By order dated March 31, 2015, the Supreme Court provided that: “On December 2, 2014, the Court published for public comment the petition of the Access to Justice Commission (‘the Commission’) asking the Court to amend Tennessee Supreme Court Rule 9, sections 10.2 and 10.10. In particular, the Commission proposed amending Rule 9, section 10.10 to require Tennessee attorneys to

report annually the extent of their pro bono work, if any, and to impose an administrative sanction on any lawyer who failed to report pro bono hours. The Commission also proposed amending Rule 9, section 10.2 to implement a new funding mechanism for access-to-justice programs. Specifically, the Commission proposed including on the annual registration form licensed Tennessee lawyers must com-

plete for the Board of Professional Responsibility an 'opt out' line item for lawyers to select if they chose not to make a contribution (with \$50 as the suggested contribution) to support access-to-justice programs. The deadline for written comments on the Commission's proposed amendments was set for February 2, 2015, and has now expired. Many thoughtful comments regarding the proposed amendments were submitted, and the Commission was permitted to submit a response to these comments.

"Upon due consideration of the petition, the comments, and the response, the Court denies in part and grants in part the Commission's petition. In particular, the Court declines to require Tennessee attorneys to report annually the extent of their pro bono work. As a result, the Court also declines to impose a sanction for failure to report. Nevertheless, the Court continues to encourage strongly voluntary reporting of pro bono participation. Such reporting provides important information, which is used for many purposes, including raising public awareness about the selfless and ongoing efforts of Tennessee attorneys to improve access to justice in this State.

"The Court grants the Commission's request to establish a new voluntary funding mechanism for access-to-justice programs. The Court declines, however, to require Tennessee attorneys to 'opt out' of participating in this program. Instead, the annual registration form

will be revised to include a section that allows Tennessee attorneys to 'opt in' by making a voluntary financial contribution to access-to-justice programs.

"The Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 10.2 and 10.10, as set out in the attached Appendix A. These amendments shall take effect on July 1, 2015. The annual registration form has been revised as a result of these amendments, and the revised form is attached as Appendix B."

By order dated April 20, 2020, the Supreme Court provided that: "On December 18, 2018, this Court entered an order soliciting written comments on proposed amendments to Tennessee Supreme Court Rule 9, section 10, regarding annual registration and payments by attorneys. After the expiration of the public-comment period, the Court considered further revisions to the proposed amendments.

"On December 13, 2019, the Court entered an order soliciting written comments to the revised proposed amendments. During the second comment period, the Court received written comments from the Board of Professional Responsibility ("BPR"). The Court thanks the BPR for its input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 10, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Section 11. Grounds for Discipline

11.1. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct of the State of Tennessee, including acts prior to surrender of a law license, suspension, disbarment, or transfer to inactive status on other grounds, and acts subsequent to resignation, suspension, disbarment, or transfer to inactive status which acts amount to the practice of law, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

11.2. Conviction of a serious crime as defined in Section 2 also shall be grounds for discipline pursuant to the procedures set forth in Section 22.

11.3. Adjudication that a lawyer has willfully refused to comply with a court order also shall be grounds for discipline.

Section 12. Types of Discipline

The following are the types of discipline which may be imposed, with or without conditions, on the basis of the grounds for discipline set forth in Section 11.

12.1. Disbarment. Disbarment terminates the individual’s status as an attorney.

12.2. Suspension.

(a) Suspension generally is the removal of an attorney from the practice of law for a specified minimum period of time. Suspension may be for a fixed period of time, or for a fixed period of time and an indefinite period to be determined by the conditions proposed by the judgment. The imposition of a portion but not all of a suspension for a fixed period of time may be deferred in conjunction with a period of probation ordered pursuant to Section 14. A suspension order must result in some cessation of the practice of law for not less than thirty days.

(1) No attorney suspended under any Section of this Rule shall resume practice until reinstated by order of the Court.

(2) No suspension shall be ordered for a specific period less than thirty days or in excess of ten years.

(3) All suspensions regardless of duration shall be public and shall be subject to the provisions of Section 28, unless otherwise expressly provided in this Rule.

(b) No suspension shall be made retroactive, except that a suspension may be made retroactive to a date on which an attorney was temporarily suspended pursuant to Section 12.3 or Section 22 if the attorney was not subsequently reinstated from such temporary suspension. [Amended by order filed and effective January 23, 2020.]

Compiler’s Notes. In its order dated January 23, 2020, the Supreme court provided that, “On September 18, 2019, the Court entered an order soliciting public comments for proposed amendments to Tennessee Supreme Court Rule 9, sections 8, 12, and 30. The deadline for submitting written comments was December 17, 2019. The Court received written comments during the comment period from the Tennessee Bar Association (“TBA”), the Knoxville Bar As-

sociation (“KBA”), the Board of Professional Responsibility (“BPR”), David Steele, Esq., and Elliott J. Schuchardt, Esq.

“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 8, 12 and 30, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

NOTES TO DECISIONS

1. Suspension Proper.

Certain standards applied to the facts of the attorney’s case, and he had been sanctioned seven times since 1991, including probation which was conditioned on him not engaging in conduct that violated the professional conduct rules, but less than five months later, he did so by engaging in an unacceptable pattern of neglect; suspension for 45 days was proper, not an arbitrary application of the rule, and the penalty was supported by substantial evidence. *Mabry v. Bd. of Prof’l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Trial court properly affirmed the decision of the Board of Professional Responsibility, which determined that an attorney had to be suspended, because the attorney’s conduct of representing two clients with conflicting interests was egregious; the aggravating factors were prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law, and there were no mitigating factors. *Cody v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 471 S.W.3d 420, 2015 Tenn. LEXIS 584 (Tenn. July 27, 2015).

12.3. Temporary Suspension.

(a) On petition of Disciplinary Counsel and supported by an affidavit or declaration under penalty of perjury demonstrating facts personally known to affiant showing that an attorney has misappropriated funds to the attorney's own use, has failed to respond to the Board or Disciplinary Counsel concerning a complaint of misconduct, has failed to substantially comply with a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel pursuant to Section 36.1, or otherwise poses a threat of substantial harm to the public, the Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both.

(b) Any order of temporary suspension which restricts the attorney maintaining a trust account shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court.

(c) Any order of temporary suspension issued under this Rule shall preclude the attorney from accepting any new cases, unless otherwise provided in the order. An order of temporary suspension shall not preclude the attorney from continuing to represent existing clients during the first thirty days after the effective date of the order of temporary suspension, unless otherwise provided in the order; however, any fees tendered to such attorney during such thirty day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court.

(d) The attorney may for good cause request dissolution or amendment of any such order of temporary suspension by filing in the Nashville office of the Clerk of the Supreme Court and serving on Disciplinary Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall be set for immediate hearing before the Board or a panel. The Board or panel shall hear such petition forthwith and file its report and recommendation to the Supreme Court with the utmost speed consistent with due process. There shall be no petition for rehearing. Upon receipt of the foregoing report, the Court may modify its order if appropriate or continue such provision of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney.

NOTES TO DECISIONS**1. Generally.**

Suspension of an attorney from the practice of law for 30 days was appropriate because the attorney's derogatory e-mail to a bankruptcy judge violated the rule against ex parte communications, Tenn. Sup. Ct. R. Prof. Conduct 8,

3.5, and was also sanctionable as conduct intended to disrupt a tribunal, under Tenn. Sup. Ct. R. Prof. Conduct 8, 3.5. *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

12.4. Public Censure. Public censure is a form of public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law.

12.5. Private Reprimand. Private reprimand is a form of non-public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law. A private reprimand may be imposed when there is harm or risk of harm to the client, the public, the legal system or the profession, and the respondent attorney has previously received a private informal admonition for the same misconduct and repeats the misconduct; or, when there are several similar acts of minor misconduct within the same time frame, but relating to different matters.

12.6. Private Informal Admonition. Private informal admonition is a form of non-public discipline which declares the conduct of the attorney improper, but does not limit the attorney's privilege to practice law. Private informal admonition may be imposed when there is harm or risk of harm to the client, the public, the legal system or the profession, but the misconduct appears to be an isolated incident or is minor.

12.7. Restitution. Upon order of a hearing panel, panel or court, or upon stipulation of the parties, and in addition to any other type of discipline imposed, the respondent attorney may be required to make restitution to persons or entities financially injured as a result of the respondent attorney's misconduct. In the event that a person or entity financially injured as a result of the respondent attorney's misconduct has received any payment from or has a claim pending before the Tennessee Lawyers' Fund for Client Protection, the order or stipulation shall provide that the Fund shall be reimbursed to the extent of such payment by the Fund.

12.8. Upon order of a hearing panel, panel or court, or upon stipulation of the respondent attorney and Disciplinary Counsel in matters which are or are not in formal proceedings, conditions consistent with the purpose of this Rule and with the Rules of Professional Conduct, including but not limited to the requirement of a practice monitor pursuant to the procedures set forth in Section 12.9 and completion of a practice and professionalism enhancement program, may be placed upon the imposition of any form of public discipline. If a respondent attorney fails to fully comply with the conditions placed upon the public discipline imposed, the Board may reopen its disciplinary file and conduct further proceedings under these Rules.

12.9. Practice Monitors.

(a) If a practice monitor is required as a condition of public discipline pursuant to Section 12.8, or as a condition of probation pursuant to Section 14, or as a condition of reinstatement pursuant to Section 30, the judgment or order of the hearing panel or panel and the Order of Enforcement, Order of Reinstatement, or other judgment or order of the reviewing court shall specify the duties and responsibilities of the practice monitor.

(b) The duties and responsibilities of a practice monitor may include, but shall not be limited to, supervision of the respondent or petitioning attorney's compliance with any conditions of discipline, probation, or reinstatement; and, the respondent or petitioning attorney's compliance with trust account rules,

accounting procedures, office management procedures, and any other matters involving the respondent or petitioning attorney's practice of law which the parties, by stipulation or agreement, or the hearing panel, panel or reviewing court determines to be appropriate and consistent with the violation(s) for which the respondent or petitioning attorney was disciplined. The practice monitor shall make periodic reports to Disciplinary Counsel at such times or intervals as may be prescribed by Disciplinary Counsel and also as deemed necessary or desirable by the practice monitor.

(c) The respondent or petitioning attorney shall, within fifteen days of the entry of the stipulation, judgment or order imposing the requirement of a practice monitor, provide to the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed to practice law in this State and whose licenses are in good standing with the Board, and none of whom shall be engaged in the practice of law with the respondent or petitioning attorney, whether in a law firm of any form or structure or in an association of attorneys of any kind or form. The Board, in its sole discretion, shall designate a practice monitor from the list so provided, and the Board's designation shall be final and not subject to appeal. In the event that the Board, in its sole discretion, determines that none of the respondent or petitioning attorney's proposed practice monitors is acceptable, or the respondent or petitioning attorney fails to provide the required list, the Board shall designate a practice monitor, and the Board's designation shall be final and not subject to appeal.

(d) The respondent or petitioning attorney shall be responsible for and shall pay a reasonable fee to the practice monitor, and, where applicable, the payment of such fee shall be a condition of reinstatement pursuant to Section 30. The practice monitor may make application to the Board Chair for an award of fees and shall file with the application an affidavit or a declaration under penalty of perjury and such other documentary evidence as the practice monitor deems appropriate documenting the hours expended and the fees incurred, and shall serve a copy of the same on the respondent or petitioning attorney. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the fees incurred. The respondent or petitioning attorney may within fifteen days after the practice monitor's application submit to the Board Chair and serve on the practice monitor any response in opposition to the application for an award of fees. The burden shall be upon respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or fees incurred by the practice monitor were unnecessary or unreasonable. The practice monitor or the respondent or petitioning attorney may request a hearing before a panel, in which event the panel shall promptly schedule the same. The panel shall within fifteen days from the conclusion of such hearing submit to the Board its findings and judgment with respect to the practice monitor's application for the award of fees. There shall be no petition for rehearing. The Board shall review the panel's findings and judgment and shall either enter the panel's judgment or modify the same and enter judgment as modified. In the event no hearing is requested, the Board shall within fifteen days from the date on which the respondent or petitioning attorney's response is due or is submitted, whichever is earlier, enter a judgment with respect to the practice monitor's application

for the award of fees. There shall be no other or further relief with respect to an application for the award of practice monitor fees. Nothing herein shall prohibit the practice monitor from providing these services pro bono. A practice monitor who elects to provide services pro bono may include the hours providing such services on his or her annual pro bono reporting statement under the category of "hours providing legal services to improve the law, the legal system, or the legal profession."

Section 13. Diversion of Disciplinary Cases

13.1. Authority of Board. The Board is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction. Subject to Section 36.1(d), the Board is also authorized to require a respondent attorney to enter into a Tennessee Lawyer Assistance Program monitoring agreement requiring mandatory reporting to Disciplinary Counsel as a condition of diversion under this Section. Such monitoring agreement may, in the Board's discretion, qualify as a practice and professionalism enhancement program or a part thereof.

13.2. Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a private informal admonition or a private reprimand are eligible for diversion to practice and professionalism enhancement programs.

13.3. Limitation on Diversion. A respondent attorney who has been the subject of a prior diversion within five years shall not be eligible for diversion.

13.4. Approval of Diversion. The Board shall not offer a respondent attorney the opportunity to divert a disciplinary case to a practice and professionalism enhancement program unless the Board or a combination of Disciplinary Counsel and a district committee member concur.

13.5. Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in Section 13.4, the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent attorney shall be diverted, shall state the general purpose for the diversion, and that the costs thereof shall be paid by the respondent attorney.

13.6. Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in Section 13.4, the recommendation shall be served on the respondent attorney who may accept or reject a diversion recommendation in the same manner as provided for in Section 15. The respondent attorney shall not have the right to reject any specific requirement of a practice and professionalism enhancement program.

13.7. Effect of Rejection of Recommendation by Respondent Attorney. In the event that a respondent attorney rejects a diversion recommendation the matter shall be returned for further proceedings under this Rule.

13.8. Effect of Diversion.

(a) When the recommendation of diversion becomes final, the respondent attorney shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by diversion and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by diversion under this Section.

(b) Upon the respondent attorney's successful completion of the practice and professionalism enhancement program(s), the Board shall terminate its investigation into the matter and its disciplinary files indicating the diversion shall be closed unless the diversion is ordered in addition to other discipline. Diversion into the practice and professionalism enhancement program shall not constitute a disciplinary sanction and shall remain confidential.

13.9. Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent attorney fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent attorney was diverted, including the payment of costs thereof, the Board may reopen its disciplinary file and conduct further proceedings under this Rule. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

Section 14. Probation

14.1. Probation. In the discretion of the hearing panel, panel or a reviewing court, the imposition of a suspension for a fixed period (Section 12.2) may be deferred in conjunction with a fixed period of probation. The conditions of probation shall be stated in writing in the judgment of the hearing panel, panel or court. Probation shall be used only in cases where there is little likelihood that the respondent attorney will harm the public during the period of rehabilitation and where the conditions of probation can be adequately supervised. Subject to Section 36.1(d), the hearing panel, panel or reviewing court may require the respondent attorney to enter into a monitoring agreement with the Tennessee Lawyer Assistance Program requiring mandatory reporting to Disciplinary Counsel. The hearing panel, panel or reviewing court may require as a condition of probation the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9 and the completion of a practice and professionalism enhancement program. The respondent attorney shall pay the costs associated with probation, including but not limited to a reasonable fee to the practice monitor.

NOTES TO DECISIONS

1. Suspension.

Hearing panel of the Board of Professional Responsibility acted arbitrarily and capriciously by probating the entirety of an attorney's suspension because it failed to find an applicable aggravating factor, the vulnerability of the attorney's law partner victims, and the sanction it imposed was out of line with the

sanctions in comparable cases; the hearing panel did not impose any conditions, probation monitoring, or supervision during the probationary period. Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

14.2. In the event the respondent attorney violates or otherwise fails to meet any condition of probation, Disciplinary Counsel is authorized to file a petition to revoke probation. Upon the filing of such a petition, the respondent attorney shall have the opportunity to appear and be heard before a panel. A record of such hearing shall be made in the same manner as for a disciplinary hearing under Section 15.2. The only issue in such a proceeding is whether probation is to be revoked; the original judgment imposing the fixed period of probation may not be reconsidered. Upon finding that revocation of probation is warranted, the panel shall order that the respondent attorney serve the previously deferred period of suspension. As an alternative to revocation, the panel may impose additional conditions on probation, including the requirement of a practice monitor to be appointed in accordance with the procedures set forth in Section 12.9. Having conducted such a hearing, the panel shall file an order within thirty days; this order must include the basis for the panel's decision. There shall be no petition for rehearing. An order reflecting the decision shall be treated as a decree of the circuit or chancery court and, as such, is appealable to the Court under Section 33.

14.3. Probation shall terminate upon the expiration of the fixed period of probation, unless the conditions of probation have been violated or have not been met. Probation may be terminated earlier by the tribunal (hearing panel or court) which imposed the period of probation upon the filing of a motion and an affidavit or declaration under penalty of perjury by the respondent attorney showing compliance with all the conditions of probation and an affidavit or declaration under penalty of perjury by the practice monitor, if one is designated, stating that probation is no longer necessary and summarizing the basis for that statement. Disciplinary Counsel shall file a response to any such motion to terminate probation. The tribunal may conduct whatever hearings are necessary to decide the motion to terminate probation. There shall be no petition for rehearing. The tribunal's ruling on the motion may be appealed pursuant to Section 33.

Section 15. Initiation, Investigation, and Hearing

15.1.

(a) All complaints must be submitted in writing, must contain the identity of the complainant, and must be signed by the complainant. The Board shall provide the respondent attorney with a complete copy of the original complaint and of any additional or supplemental written submissions provided by the

complainant. In the event that the Board's investigation is the result of information from a source other than a written complaint pursuant to Section 4.5(a), the Board shall notify the respondent attorney and provide a copy of such information.

(b) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may recommend dismissal, private informal admonition, private reprimand, public censure or prosecution of formal charges before a hearing panel.

(c) If Disciplinary Counsel recommends disposition by dismissal or private informal admonition, the reviewing member of the district committee in the appropriate disciplinary district shall review the recommendation and may approve or modify it. In reviewing the recommended disposition, the reviewing member of the district committee shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. In no event may the reviewing member of the district committee impose a sanction greater than private informal admonition. Nor may the reviewing member of the district committee offer diversion except as provided in Section 13.4. Disciplinary Counsel may appeal to the Board the action of the reviewing member of the district committee.

(d) If Disciplinary Counsel recommends disposition by private reprimand or public censure, or recommends the prosecution of formal charges before a hearing panel, the Board shall review the recommendation and approve or modify it. In reviewing the recommended disposition, the Board shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions. The Board may determine whether a matter should be concluded by dismissal or private informal admonition; may recommend a private reprimand or public censure; or, may direct that a formal proceeding be instituted.

(e) A respondent attorney shall not be entitled to appeal a private informal admonition approved by the reviewing member of the district committee or imposed by the Board; similarly, a respondent attorney may not appeal a recommended private reprimand or public censure by the Board. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a hearing panel in the appropriate disciplinary district. In the event of such demand, the private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

(f) If Disciplinary Counsel recommends disposition by dismissal, and if that recommended disposition is approved by the reviewing member of the district committee in the appropriate disciplinary district, Disciplinary Counsel shall provide the complainant notice of the disposition by dismissal. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Board within thirty days of receipt of notice of the reviewing member's approval of the recommended disposition. The Board, or a committee of no fewer than three of its members, may approve, modify or disapprove the disposition, or direct that the matter be investigated further. The complainant

has no other or further right of appeal or review under this Rule or otherwise.

(g) If Disciplinary Counsel recommends disposition by private informal admonition, and if that recommended disposition is approved by the reviewing member of the district committee in the appropriate disciplinary district, Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by private informal admonition and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private informal admonition under this Section.

(h) If Disciplinary Counsel recommends disposition by private reprimand, and if that recommended disposition is approved by the Board, Disciplinary Counsel shall provide the complainant notice that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

Attorney General Opinions. Rights of persons who file attorney disciplinary complaints. OAG 12-17, 2012 Tenn. AG LEXIS 17 (2/21/12).

15.2.

(a) Formal disciplinary proceedings before a hearing panel shall be commenced by Disciplinary Counsel by filing with the Board a Petition for Discipline (hereinafter “Petition”) which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. Disciplinary Counsel, as needed, may file Amended Petitions which arise out of the same facts and circumstances but which change, delete or augment the existing allegations. Disciplinary Counsel, as needed and with the approval of the Board, may file Supplemental Petitions which make new allegations and which bring new charges arising from a different complaint(s) not previously included in a Petition. No Petition, Amended Petition, or Supplemental Petition shall include allegations of any private discipline previously imposed against the respondent attorney.

(b) A copy of the Petition shall be served upon the respondent attorney pursuant to Section 18.1. The respondent attorney shall serve an answer upon Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board within thirty days after the service of the Petition, unless such time is extended by the agreement of Disciplinary Counsel or by leave of the Chair of the Board. In the event the respondent attorney fails to answer, the charges shall be deemed admitted and Disciplinary Counsel may move the hearing panel assigned to hear the matter for entry of a Judgment of Default. Disciplinary Counsel shall serve a copy of any such motion on the respondent attorney pursuant to Section 18.2. Relief from a Judgment of Default for failure to serve an answer to the Petition within thirty days shall be determined by the hearing panel in the same manner such motions are determined by Rule 55.02 of the Tennessee Rules of Civil Procedure. Upon granting relief from a Judgment of Default, the hearing panel may extend the respondent attorney’s time to answer the Petition.

(c) A copy of any Amended Petition or Supplemental Petition shall be served on the respondent attorney pursuant to Section 18.2. The respondent attorney

shall serve an answer on Disciplinary Counsel pursuant to Section 18.2 and file the original with the Board within fifteen days after service of the Amended Petition or Supplemental Petition, unless such time is extended by the agreement of Disciplinary Counsel or by leave of the hearing panel assigned to hear the matter.

(d) Following the service of the answer to the Petition, or upon failure to answer, the matter shall be assigned by the Chair of the Board to a hearing panel. The Chair of the Board, or in the absence of the Chair the Vice-Chair of the Board, shall select the hearing panel from the members of the district committee in the district in which the respondent practices law. The hearing panel shall be selected pursuant to written procedures approved by the Board. If there is an insufficient number of committee members in that district who are able to serve on the hearing panel, the Chair, or Vice -Chair, may appoint one or more members from the district committee of an adjoining district to serve on the panel.

(e) Ex parte communications between the Chair or the Vice-Chair of the Board, district committee members, and the Executive Secretary of the Board concerning the selection of hearing panels and for scheduling or other administrative purposes are permitted. A district committee member may advise the Executive Secretary of the Board if he or she is unable to serve on a hearing panel for any reason.

(f) A pre-hearing conference shall be held within sixty days of the filing date of any Petition commencing a formal proceeding, or within thirty days of the filing of the answer if an extension has been granted. The pre-hearing conference shall be conducted by the chair of the assigned hearing panel and at least one other member of the hearing panel. The pre-hearing conference may be conducted in person, by telephone, or by video conference. In the pre-hearing conference, the hearing panel shall schedule deadlines for discovery, the filing of motions, and the exchange of witness and exhibit lists, and it also shall set the hearing date. The hearing panel may discuss with and accept from the parties stipulations of fact and/or stipulations regarding the authenticity of documents and exhibits, may narrow the issues presented by the pleadings, and may address any other matter the hearing panel deems appropriate in the management of the proceeding, including but not limited to the resolution of any discovery disputes except as otherwise provided by Section 19. Subsequent pre-hearing conferences may be held in the discretion of the hearing panel, acting on its own initiative or upon motion of a party. Within five days of each pre-hearing conference, the chair of the hearing panel shall file an order reciting the actions taken by the hearing panel during the conference, including any deadlines imposed and the date set for the hearing. The order shall advise the respondent attorney that he/she is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence in his/her own behalf.

(g) In a hearing panel's hearing on the Petition, Disciplinary Counsel may submit evidence of prior discipline against the respondent attorney, including prior private discipline, as an aggravating circumstance. Such evidence may be introduced to the extent it is otherwise admissible under the Tennessee Rules of Evidence. Pursuant to Section 32.6, the respondent attorney may apply to the hearing panel for a protective order concerning the admission of evidence

of prior private discipline.

(h) In hearings on formal charges of misconduct, Disciplinary Counsel must prove the case by a preponderance of the evidence.

NOTES TO DECISIONS

ANALYSIS

- 1. Application.
- 2. Procedural Rules.

1. Application.

Though the Tennessee Rules of Civil Procedure generally apply in attorney disciplinary proceedings, it is only where the Tennessee Supreme Court Rules do not provide otherwise, and thus the disciplinary rule governs the content requirements for petitions in attorney disciplinary proceedings, not the civil procedure rule; because the petition for discipline filed in this case complied with the requirements of the disciplinary rule, the petition was not procedur-

ally deficient. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

2. Procedural Rules.

Attorney was provided with the procedural rights listed in the rules, as he was given adequate notice of the disciplinary charges against him, had the opportunity to be represented by an attorney of his choosing, was able to cross-examine witnesses called against him, and had been given and fully utilized his opportunity to respond, and there were no procedural errors; he received due process throughout his disciplinary proceedings. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

15.3.

(a) In every case, the hearing panel shall submit its findings and judgment, in the form of a final decree of a trial court, to the Board within thirty days after the conclusion of the hearing. The hearing panel's findings and judgment shall contain a notice that the findings and judgment may be appealed pursuant to Section 33. The Executive Secretary shall serve a copy of the hearing panel's findings and judgment upon Disciplinary Counsel, the respondent attorney and the respondent attorney's counsel of record pursuant to Section 18.2. The hearing panel may make a written request to the Chair for an extension of time within which to file its findings and judgment. In the event that the hearing panel does not submit its findings and judgment within thirty days or such other time as extended by the Chair, Disciplinary Counsel shall report the same to the Court which may take such action as it deems necessary to secure submission of the findings and judgment. The failure of the hearing panel to meet this deadline, however, shall not be grounds for dismissal of the Petition.

(b) There shall be no petition for rehearing. Any appeal pursuant to Section 33 must be filed within sixty days of the entry of the hearing panel's judgment. If the Board makes application to the hearing panel for the assessment of costs pursuant to Section 31, the making of such application shall extend the time for taking steps in the regular appellate process under Section 33.1(a) unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise.

15.4.

(a) If the hearing panel finds one or more grounds for discipline of the respondent attorney, the hearing panel's judgment shall specify the type of discipline imposed: disbarment (Section 12.1), suspension (Section 12.2), or public censure (Section 12.4). In the discretion of the hearing panel, the

imposition of a portion but not all of a suspension for a fixed period of time (Section 12.2) may be deferred in conjunction with a period of probation ordered pursuant to Section 14. In addition to imposing one of the foregoing types of discipline, the hearing panel may order restitution (Section 12.7). Temporary suspension (Section 12.3), private reprimand (Section 12.5), and private informal admonition (Section 12.6) are not types of discipline available to the hearing panel following the filing of a Petition for Discipline. In determining the appropriate type of discipline, the hearing panel shall consider the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions.

(b) If the judgment of the hearing panel is that the respondent attorney shall be disbarred or suspended for any period of time or shall receive a public censure, and no appeal is perfected within the time allowed, or if there is a settlement providing for a disbarment or suspension for any period of time or a public censure, at any stage of disciplinary proceedings, the Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with attached copies of the Petition, the judgment or settlement, the proposed Order of Enforcement, and a Protocol Memorandum as defined in Section 2. A copy of the proposed Order of Enforcement and the Protocol Memorandum shall be served upon the respondent attorney and the respondent attorney's counsel of record pursuant to Section 18.2. In all cases except those in which the sanction imposed is by agreement, the respondent attorney shall have ten days from service of the foregoing within which to file with the Court and serve upon Disciplinary Counsel pursuant to Section 18.2 a response to the Protocol Memorandum. Such response shall be limited to contesting any alleged factual errors in the Protocol Memorandum. The Court shall review the recommended punishment provided in such judgment or settlement with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

(c) If the Court finds that the punishment imposed under subsection (b) appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent attorney that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty days from the date of the order to file a brief and request oral argument; if the Court proposes to decrease the punishment, the Board shall have twenty days from the date of the order within which to file a brief and request oral argument. Reply briefs shall be due within twenty days of the filing of the preceding brief. If a party requests oral argument, the Court may grant it. Upon termination of such proceedings as are requested, the Court may modify the judgment of the hearing panel or the settlement in such manner as it deems appropriate. There shall be no petition for rehearing.

(d) If the judgment of a hearing panel is appealed to the circuit or chancery court pursuant to Section 33 and the trial court enters a judgment disbarring or suspending the respondent attorney for any period of time or imposing a public censure, and no appeal is perfected within the time allowed, the Board

shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of its judgment. The Court shall review the recommended punishment provided in such judgment with a view to attaining uniformity of punishment throughout the State and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

(e) If the Court finds that the punishment imposed under subsection (d) appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent attorney that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty days from the date of the order to file a brief and request oral argument; if the Court proposes to decrease the punishment, the Board shall have twenty days from the date of the order within which to file a brief and request oral argument. Reply briefs shall be due within twenty days of the filing of the preceding brief. If a party requests oral argument, the Court may grant it. Upon termination of such proceedings as are requested, the Court may modify the judgment of the trial court in such manner as it deems appropriate. There shall be no petition for rehearing.

NOTES TO DECISIONS

1. Sanctions.

Given the findings that an attorney intentionally committed serious criminal conduct the Hearing Panel of the Board of Professional Responsibility was correct in identifying the American Bar Association Standards for Imposing Lawyer Sanctions as an appropriate guidepost for selecting the presumptive sanction; the hearing panel also found that the attorney acted intentionally to conceal transactions from his partners even though he believed he was entitled to those funds. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers's misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

One-year suspension imposed was appropriate because substantial and material evidence supported the conclusion that an attorney was

not apologetic and did not acknowledge his conduct was wrongful; the attorney's refusal to acknowledge the wrongful nature of his conduct was properly considered as an aggravating factor in determining an appropriate sanction for his misconduct. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Hearing panel's findings of fact and conclusions of law supported suspension as the presumptive sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions because the attorney failed to disclose material facts to an administrative law judge, and threatened the judge to coerce action favorable to his client, and made disparaging descriptions of the judge and the tribunal; his conduct impeded a resolution, which was prejudicial to the administration of justice. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Board of Professional Responsibility hearing panel did not act arbitrarily or capriciously or abuse its discretion in recommending suspension because its decision reflected the presumptive sanction under several American Bar Association's Standards for Imposing Lawyer Sanctions applicable to an attorney; the hearing panel was at liberty to recommend a sanction for the attorney from the range of presumptive sanctions under the applicable Standards. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

In an attorney discipline proceeding related to the attorney's representation of a client in her personal injury action, disbarment was appropriate based on the attorney's failure to timely refile the case after filing a nonsuit on his client's behalf, which resulted in the client's claim being barred by the applicable statute of limitations, and the attorney's subsequent paying the client a sum of money to settle her potential claim against him without advising the client in writing that she should seek independent legal counsel in reaching a settlement. *Thompson v. Bd. of Prof'l Responsibility*, 600 S.W.3d 317, 2020 Tenn. LEXIS 153 (Tenn. Apr. 28, 2020).

Fact that ethically problematic conduct occurs on a social media platform need not always be an aggravating circumstance; however, if the use of social media exacerbates the problem the ethics rule seeks to address, it may be considered an aggravating factor for purposes of lawyer discipline. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Lawyer's social media advice, how to orchestrate a killing in a way to provide a fabricated defense to criminal charges, was clearly prejudicial to the administration of justice, and the act of posting the comments on social media

was deemed an aggravating factor that justified an increase in discipline; the court modified the hearing panel's judgment to impose a four-year suspension from the practice of law, with one year to be served on active suspension and the remainder on probation. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Even in cases where the facts do not fit neatly within the American Bar Association (ABA) Standards, it is necessary for hearing panels in attorney disciplinary matters to follow the procedural steps and ascertain the presumptive sanction under the ABA Standards before deciding the appropriate sanction for the violation at issue. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Although the lawyer did not make any false statements himself and did not necessarily urge the author of the social media post to commit a crime and falsify a defense, his post gave her the tools to use deadly force against her ex-boyfriend if she chose to, in a way calculated to make it appear to be self-defense; suspension rather than disbarment was the appropriate presumptive sanction in this case. In *re Sitton*, — S.W.3d —, 2021 Tenn. LEXIS 8 (Tenn. Jan., 27, , 2021).

Section 16. Complaints Against Board Members, District Committee Members, or Disciplinary Counsel

16.1.

(a) Complaints against Disciplinary Counsel or a district committee member alleging violations of the Rules of Professional Conduct shall be submitted directly to the Board.

(b) Disagreement with the official decision of Disciplinary Counsel, a hearing panel, or a district committee member, taken in the course and scope of his or her responsibilities, shall not be grounds for the filing of a disciplinary complaint.

(c) The investigation of complaints against Disciplinary Counsel submitted under Section 16.1 shall proceed in accordance with the procedures contained in Section 15, except that an attorney member of the Board appointed by the Chair shall conduct the investigation and the findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon application to the Court, the Court may authorize the payment of reasonable fees to Special Disciplinary Counsel.

(d) The investigation of complaints against district committee members shall be conducted by Disciplinary Counsel in accordance with the procedures contained in Section 15. The findings of such investigation shall be reviewed by a committee of no fewer than three members of the Board appointed by the Chair or Vice Chair. Provided, however, that the Board may request the Court to appoint a Special Disciplinary Counsel to conduct the investigation. Upon

application to the Court, the Court may authorize the payment of reasonable fees to Special Disciplinary Counsel.

Attorney General Opinions. Rights of persons who file attorney disciplinary complaints. OAG 12-17, 2012 Tenn. AG LEXIS 17 (2/21/12).

16.2.

(a) Complaints against attorney members of the Board alleging violations of the Rules of Professional Conduct shall be submitted directly to the Chief Justice of the Court.

(b) Disagreement with the official decision of the Board or a member, taken in the course and scope of his or her responsibilities, shall not be grounds for the filing of a disciplinary complaint.

16.3. The investigation of complaints submitted under Section 16.2 against attorney members of the Board shall proceed in accordance with the procedures contained in Section 15, with the following modifications:

(a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order entered under seal, shall take the place and perform all of the functions of Disciplinary Counsel set forth in Section 15.1, including all investigations, whether upon complaint or otherwise. Upon conclusion of an investigation, Special Disciplinary Counsel may recommend dismissal, private informal admonition of the attorney concerned, or a private reprimand, public censure, or prosecution of formal charges before a special hearing panel.

(b) One member of the Court, whom the Chief Justice shall designate, shall take the place and perform all of the functions of the Board in all investigations and proceedings governed by this Section, including the review of recommendations of dismissal or private informal admonition, or a private reprimand, public censure or prosecution of formal charges, pursuant to Section 15.1. The member so designated shall not participate with the Court in any subsequent proceedings in the same case.

(1) If Special Disciplinary Counsel's recommendation is dismissal, it shall be reviewed by the designated member of the Court ("Reviewing Justice"), who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice of the disposition by dismissal shall be provided by Special Disciplinary Counsel to the complainant. A complainant who is not satisfied with the disposition by dismissal of the matter may appeal in writing to the Chief Justice within thirty days of receipt of notice of the Reviewing Justice's approval of the recommended disposition. The Court may approve, modify, or disapprove the disposition, or direct that the matter be investigated further. If the Court approves the recommended disposition of dismissal, the Court shall enter an appropriate order under seal.

(2) If Special Disciplinary Counsel's recommendation is private informal admonition, it shall be reviewed by the Reviewing Justice, who may approve or modify it. If the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by private informal admonition and that the matter is confidential under Section 32. The complainant has no right to

appeal a disposition by private informal admonition under this Section.

(3) If the recommended disposition is private reprimand, public censure, or prosecution of formal charges before a special hearing panel, the Reviewing Justice shall review the recommendation and shall approve, disapprove, or modify it. The Reviewing Justice may determine whether a matter should be concluded by dismissal or private informal admonition; may approve or impose a private reprimand or public censure; or may direct that a formal proceeding be instituted before a special hearing panel.

(4) If Special Disciplinary Counsel's recommendation is private reprimand, and if the recommendation is approved by the Reviewing Justice, notice shall be provided by Special Disciplinary Counsel to the complainant that the complaint has been resolved by private reprimand and that the matter is confidential under Section 32. The complainant has no right to appeal a disposition by private reprimand under this Section.

(5) The respondent attorney shall not be entitled to appeal a private informal admonition approved by the Reviewing Justice; similarly, the respondent attorney may not appeal a private reprimand or public censure approved or imposed by the Reviewing Justice. In either case, however, the respondent attorney may, within twenty days of notice thereof, demand as of right that a formal proceeding be instituted before a special hearing panel. In the event of such demand, the private informal admonition shall be vacated or the recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

(c) If the recommendation, as approved or modified by the Reviewing Justice, includes the institution of formal proceedings before a hearing panel, or if the respondent attorney demands in writing to the Chief Justice such formal proceedings as of right, then the Chief Justice shall at that time appoint three persons to act as a special hearing panel. The special hearing panel shall take the place and perform all of the functions of the hearing panel as provided in Sections 6 and 15. The Special Disciplinary Counsel shall continue to perform the functions of Disciplinary Counsel and shall proceed in accordance with the provisions of this Rule governing formal proceedings.

(d) There shall be no petition for rehearing. The respondent attorney or Special Disciplinary Counsel may appeal the judgment of the special hearing panel as provided in Section 33.

Section 17. Immunity

Members of the Board, district committee members, Disciplinary Counsel, staff, and practice monitors shall be immune from civil suit for any conduct in the course of their official duties. Complainants and witnesses shall be immune from civil suit with respect to any communications to the Board, district committee members, Disciplinary Counsel or staff relating to attorney misconduct or disability or any testimony in the proceedings regarding the same, unless the information which the complainant or witness provides in such communication or such testimony is false and the complainant or witness had actual knowledge of the falsity. The immunity granted in this Section shall not

be construed to limit any other form of immunity available to any covered person.

Section 18. Service

18.1. The Petition in any disciplinary proceeding shall be served on the respondent attorney by personal service by any person authorized to do so pursuant to the Tennessee Rules of Civil Procedure, or by any form of United States mail providing delivery confirmation, at the primary or preferred address shown in the most recent registration statement filed by the respondent attorney pursuant to Section 10.1 or at the respondent attorney's other last known address. If such service is not successfully completed, the Board shall undertake additional reasonable steps to obtain service, including but not limited to, personal service or service by mail at such alternative addresses as the Board may identify, or service by email at the email address shown in the most recent registration statement filed by the respondent attorney pursuant to Section 10.1 or such other email address as the Board may identify.

18.2. Service of any other papers or notices required by this Rule shall, unless otherwise provided by this Rule, be made in accordance with Rule 5.02 of the Tennessee Rules of Civil Procedure.

Section 19. Subpoena Power, Witnesses and Pre-trial Proceedings

19.1. Any member of a hearing panel in matters before it, and Disciplinary Counsel in matters under investigation or in formal proceedings, may administer oaths and affirmations and may obtain from the circuit or chancery court having jurisdiction subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents. A respondent attorney may, similarly, obtain subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing panel after formal disciplinary proceedings are instituted.

19.2. Subpoenas issued prior to formal proceedings shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under this Rule and that it may be regarded as contempt of the Court or grounds for discipline under this Rule for a person subpoenaed to in any way breach the confidentiality of the investigation. The scope of the confidentiality of the investigation shall be governed by Section 32. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

19.3. The circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the courts of this State.

19.4. Any attack on the validity or scope of a subpoena so issued, and any application for a protective order with respect to a subpoena so issued, shall be filed in and heard and determined by the court in which enforcement of the subpoena is being sought.

19.5. Discovery proceedings by the respondent attorney, prior to institution of proceedings for a formal hearing, may be had upon the order of the Chair of the Board for good cause shown.

19.6. With the approval of the hearing panel, testimony may be taken by deposition or by interrogatories if the witness is not subject to service or subpoena or is unable to attend or testify at the hearing because of age, illness, infirmity, or incarceration. A complete record of the testimony so taken shall be made and preserved, but need not be transcribed unless needed for appeal pursuant to Section 33.

19.7. The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Section 32.

Section 20. Refusal of Complainant to Proceed, Compromise, etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement or compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

Section 21. Matters Involving Related Pending Civil or Criminal Litigation

Processing of disciplinary complaints shall not be deferred or abated because of substantial similarity to the material allegations made in other pending criminal or civil litigation or because the substance of the complaint relates to the respondent attorney's alleged conduct in pending litigation, unless authorized by the Board, in its discretion, for good cause shown.

Section 22. Attorneys Convicted Or Acknowledging Guilt of Crimes

22.1. Notice.

(a) The clerk of any court in this state in which an attorney enters a plea of nolo contendere or a plea of guilty to, or is found guilty by verdict of the jury or of the trial court sitting without a jury of, a crime shall within ten days of the plea or verdict transmit a copy thereof to the Court and to Disciplinary Counsel.

(b) Any attorney subject to the disciplinary jurisdiction of this Court who has entered a plea of nolo contendere or a plea of guilty to, or who has been found guilty by verdict of the jury or of the trial court sitting without a jury of, any serious crime, as defined in Section 2, shall within ten days of such plea or verdict provide adequate proof of the plea or verdict, including a copy thereof, to Disciplinary Counsel.

(c) Upon receiving notice from an attorney pursuant to Section 22.1(b) with respect to any serious crime, as defined in Section 2, or upon otherwise being advised that an attorney subject to the disciplinary jurisdiction of the Court has entered a plea of nolo contendere or a plea of guilty to, or has been found guilty by verdict of the jury or of the trial court sitting without a jury of, any crime, Disciplinary Counsel shall obtain adequate proof of the plea or verdict, including a copy thereof, and shall file the same with a Notice of Submission in the Nashville office of the Clerk of the Supreme Court.

22.2. Acts Not Constituting Serious Crime. Upon receipt of adequate proof and copies of the judgment, plea of nolo contendere or guilty plea with respect to any crime not constituting a serious crime, as defined in Section 2, the Court shall refer the matter to the Board for whatever action the Board may deem warranted, including the institution of an investigation by Disciplinary Counsel, or a formal proceeding before a hearing panel, provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

22.3. Serious Crime.

(a) Upon the filing with the Court of the Notice of Submission with attached adequate proof and copies demonstrating that an attorney who is a defendant in a criminal case involving a serious crime, as defined in Section 2, has entered a plea of nolo contendere or a plea of guilty or has been found guilty by verdict of the jury, or the trial court sitting without a jury, the Court shall enter an order immediately suspending the attorney. Such suspension shall take place regardless of the pendency of a motion for new trial or other action in the trial court and regardless of the pendency of an appeal. Such suspension shall remain in effect pending final disposition of a disciplinary proceeding to be commenced upon such finding of guilt.

(b) An attorney suspended under the provisions of Subsection (a) will be reinstated immediately upon the filing of an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing panel and the Board on the basis of the available evidence.

(c) Upon the receipt of adequate proof and copies of a judgment, plea of nolo contendere or guilty plea with respect to a serious crime, as defined in Section 2, the Court shall, in addition to suspending the attorney in accordance with the provisions of Section 22.3(a), also refer the matter to the Board for the institution of a formal proceeding before a hearing panel in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

22.4. An order summarily suspending an attorney from the practice of law pursuant to Section 22.3(a) shall constitute a suspension of the attorney for the purpose of Section 28.

22.5. An attorney suspended pursuant to Section 22.3(a) shall receive credit for any period of suspension served pursuant to Section 22.3(a) that preceded the commencement of the term of incarceration. Notwithstanding the provisions of Section 12.2, any suspension or disbarment ordered pursuant to Section 22.3(c) shall be served consecutive to any period of incarceration imposed upon the attorney as a result of the attorney's conviction in the underlying criminal case.

22.6. A certified copy of the judgment, plea of nolo contendere or guilty plea, or an affidavit or declaration under penalty of perjury with other adequate proof of a conviction of an attorney for any crime, shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

22.7 Judicial diversion pursuant to Tenn. Code Ann. § 40-35-313, including dismissal and discharge of the criminal proceedings and expungement from the official records pursuant to Tenn. Code Ann. § 40-35-313(b), shall not foreclose the initiation, investigation or prosecution of disciplinary action on the basis of the conduct constituting the diverted criminal offense(s). An attorney receiving judicial diversion shall not be subject to Immediate Summary Suspension pursuant to Section 22.3(a). The Board shall evaluate the facts and circumstances of each such case and proceed pursuant to Section 15 of this Rule. [Adopted by order May 9, 2016, effective May 9, 2016.]

Section 23. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution

23.1. An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, by delivering to the Board an affidavit or declaration under penalty of perjury stating that such attorney desires to consent to disbarment and that:

(a) The attorney's consent to disbarment is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting consent;

(b) The attorney is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for discipline the nature of which the attorney shall specifically set forth;

(c) The attorney acknowledges that the material facts so alleged are true; and,

(d) The attorney consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, no successful defense could be made.

23.2. Upon receipt of the required affidavit or declaration under penalty of perjury, the Board shall file under seal in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of the declaration and the Court shall enter an order disbarring the attorney on consent.

23.3. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit or declaration under penalty of perjury required under Section 23.1 shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Court.

NOTES TO DECISIONS

1. Evidence.

There was no indication that the Board of Professional Responsibility Hearing Panel Chair acted inappropriately because the Panel Chair was engaged and questioned the attorney as a witness and an advocate; the Panel Chair had the authority to limit testimony or

arguments that were repetitive, and the Panel Chair was balanced in his rulings and sometimes ruled in the attorney's favor on evidentiary objections. *Bd. of Prof'l Responsibility v. Reguli*, 489 S.W.3d 408, 2015 Tenn. LEXIS 1058 (Tenn. Dec. 28, 2015).

Section 24. Discipline by Consent

24.1. An attorney against whom formal charges have been served may at any stage of the proceedings before the Board, hearing panel or trial court, thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing panel if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if an appeal has been filed pursuant to Section 33; subject, however, in either event, to final approval or rejection by the Court if the stated form of punishment includes disbarment, suspension or public censure. In conjunction with the Court's review as set forth herein, the Board shall file in the Nashville office of the Clerk of the Supreme Court and shall serve on the respondent attorney and his/her counsel of record pursuant to Section 18.2 a Notice of Submission with an attached copy of the proposed Order of Enforcement and a Protocol Memorandum as defined in Section 2. The respondent attorney shall not be permitted to file a response to the Protocol Memorandum required under this Section.

NOTES TO DECISIONS

1. No Financial Incentive to Initiate Disciplinary Proceedings.

Tenn. Sup. Ct. R. 9, § 24 did not create a financial incentive for the Board of Professional Responsibility to initiate formal disciplinary proceedings because members of the hearing panel received no compensation, other than reimbursement for travel expenses, for sitting as the adjudicatory body in a disciplinary matter, and the members of a hearing panel had no responsibility for the budget or the finances of the board. *Long v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 435 S.W.3d 174, 2014 Tenn. LEXIS 444 (Tenn. June 4, 2014).

Since reimbursement of travel expenses was afforded, regardless of the outcome of the disciplinary proceeding, it appears the real financial incentive to which the attorney referred was the assessment of costs against attorneys who are adjudged to have violated ethical rules; the constitutionality of this system of assessing costs had already been upheld. *Walwyn v. Bd. of Prof'l Responsibility*, 481 S.W.3d 151, 2015 Tenn. LEXIS 935 (Tenn. Dec. 3, 2015), cert. denied, *Walwyn v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 194 L. Ed. 2d 769, 136 S. Ct. 1676, — U.S. —, 2016 U.S. LEXIS 2698 (U.S. 2016).

24.2. A continuance in a hearing panel proceeding, or before a trial court, on the basis of such a tender shall be granted only with the concurrence of

Disciplinary Counsel. Approval of such a tendered plea by the Board or trial court and, if required, by the Court shall divest the hearing panel or trial court of further jurisdiction. The final order of discipline shall be predicated upon the petition and an approved tendered conditional guilty plea.

Section 25. Reciprocal Discipline

25.1. Upon being subjected to professional disciplinary action in another jurisdiction while subject to the disciplinary jurisdiction of this Court pursuant to Section 8.1, an attorney shall promptly inform Disciplinary Counsel of such action in writing. Upon being informed that an attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has been subjected to discipline in another jurisdiction while subject to disciplinary jurisdiction pursuant to Section 8.1, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of such disciplinary order.

25.2. Upon receipt of a certified copy of an order pursuant to Section 25.1, the Court shall forthwith serve upon the attorney in accordance with Section 18.1 a notice containing:

- (a) A copy of the order from the other jurisdiction; and
- (b) An order directing that the attorney inform the Court, within thirty days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in Section 25.4 that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

25.3. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until such stay expires. However, Disciplinary Counsel, in his or her discretion, may initiate and conduct an independent investigation of the attorney pursuant to Section 15.

25.4. Upon the expiration of thirty days from service of the notice issued pursuant to Section 25.2, the Court shall impose the identical discipline unless Disciplinary Counsel or the attorney demonstrates, or the Court finds, that upon the face of the record upon which the discipline is predicated it clearly appears:

- (a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) That the misconduct established warrants substantially different discipline in this State. Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

25.5. In all other respects, a final adjudication in another jurisdiction that an attorney subject to disciplinary jurisdiction pursuant to Section 8.1 has

been guilty of misconduct while subject to disciplinary jurisdiction pursuant to Section 8.1 shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

**Section 26. Attorneys Failing to Comply with Tenn. Code Ann.
§§ 67-4-1701 — 1710 (Privilege Tax Applicable to Persons Licensed to
Practice Law)**

26.1. Tenn. Code Ann. § 67-4-1702 levies a tax on the privilege of engaging in certain vocations, professions, businesses and occupations, including “persons licensed as attorneys by the supreme court of Tennessee.” Tenn. Code Ann. § 67-4-1704 provides that failure to pay the privilege tax can result in suspension or revocation of “any license or registration by the appropriate licensing board” and goes on to state that “the supreme court of Tennessee is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with the requirements of this part.” The Court hereby establishes the following procedures to promote compliance with Tenn. Code Ann. §§ 67-4-1701 — 1710, as those Sections apply to attorneys licensed by the Court.

26.2. The Court designates the Chief Disciplinary Counsel of the Board as the official to whom the Department of Revenue shall monthly send a list of attorneys licensed by the Court who have failed, for ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702. (As amended by order dated May 27, 2014, effective July 1, 2014.)

26.3. Upon receipt of the list of attorneys transmitted by the Department of Revenue, the Chief Disciplinary Counsel shall send each attorney listed thereon a Privilege Tax Delinquency Notice (the “Notice”), stating that the Department of Revenue has informed the Chief Disciplinary Counsel that the attorney has failed, for ninety (90) days or more from the due date, to pay the privilege tax imposed by Tenn. Code Ann. § 67-4-1702 and that the attorney’s license is therefore subject to suspension. The Notice shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney’s most recent registration statement filed pursuant to Section 10.1 or at the attorney’s last known address, and at the email address shown in the attorney’s most recent registration statement filed pursuant to Section 10.1. (As amended by order dated May 27, 2014, effective July 1, 2014; amended by order filed April 20, 2020, effective immediately.)

26.4.
(a) Each attorney to whom a Notice is sent pursuant to Section 26.3 shall file with the Board within thirty days of the date of delivery of the Notice an affidavit or declaration under penalty of perjury supported by documentary evidence showing that the attorney has paid the delinquent privilege taxes and any interest and penalties assessed by the Department of Revenue, and has paid to the Board a delinquent compliance fee of One Hundred Dol-

lars(\$100.00) to defray the Board's costs in issuing the Notice; or, alternatively, demonstrating that the Notice was sent to the attorney in error, the attorney having timely paid the privilege taxes.

(b) Upon the expiration of thirty days from the date of the Notice pursuant to Subsection (a) hereof, the Chief Disciplinary Counsel shall submit to the Court a proposed Suspension Order. The proposed Suspension Order shall list all attorneys who were sent the Notice and who failed to respond; failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that they had paid the delinquent privilege taxes and any interest and penalties, and failed to pay to the Board a delinquent compliance fee of One Hundred Dollars (\$100.00) to defray the Board's costs in issuing the Notice; or, failed to demonstrate to the satisfaction of the Chief Disciplinary Counsel that the Notice had been sent in error. The proposed Suspension Order shall provide that the license to practice law of each attorney listed therein shall be suspended upon the Court's filing of the Order and that the license of each attorney listed therein shall remain suspended until the attorney pays the delinquent privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and a separate reinstatement fee of Two Hundred Dollars (\$200.00), and is reinstated pursuant to Subsection (d).

(c) Upon the Court's review and approval of the proposed Suspension Order, the Court will file the Order summarily suspending the license to practice law of each attorney listed in the Order. The suspension shall remain in effect until the attorney pays the delinquent privilege taxes and any interest and penalties, and pays to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee, and until the attorney is reinstated pursuant to Subsection (d). An attorney who fails to resolve the suspension within thirty days of the Court's filing of the Suspension Order shall comply with the requirements of Section 28.

(d) Reinstatement following a suspension pursuant to Subsection (c) shall require an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(1) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid to the Board the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. If the petition is satisfactory to the Chief Disciplinary Counsel and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly submit to the Court a proposed Reinstatement Order. The proposed Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment to the Board of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00)

reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. If the petition for reinstatement is denied by the Chief Disciplinary Counsel, the attorney seeking reinstatement may appeal to the Board within fifteen days of notice of the denial. The Board, or a committee of no fewer than three of its members, shall review the documentation provided by the attorney and approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing. An attorney resolves a suspension within thirty days for purposes of Section 26.4 if a proposed Reinstatement Order has been submitted to the Court within thirty days of the Court's filing of the Suspension Order.

(2) An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has paid all delinquent privilege taxes and any interest and penalties, and has paid the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all delinquent privilege taxes and any interest and penalties, and the attorney's payment of the One Hundred Dollar (\$100.00) delinquent compliance fee and the Two Hundred Dollar (\$200.00) reinstatement fee; or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. (As amended by order filed April 20, 2020, effective immediately.)

Compiler's Notes. By order dated April 20, 2020, the Supreme Court provided that: "On December 18, 2018, this Court entered an order soliciting written comments on proposed amendments to Tennessee Supreme Court Rule 9, section 26, regarding the payment of the professional privilege tax by attorneys. After the expiration of the public comment period, the Court considered further revisions to the proposed amendments.

"On December 13, 2019, the Court entered an order soliciting written comments to the re-

vised proposed amendments. During the second comment period, the Court received written comments from the Board of Professional Responsibility ("BPR"). The Court thanks the BPR for its input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 26, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Section 27. Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated

27.1. Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability or detained or placed in the custody of a center for the treatment of mental illness after a probable cause hearing pursuant to the procedures set forth in Tenn. Code Ann. § 33-6-103, the Court, upon proper proof of the fact, shall enter an

order transferring such attorney to disability inactive status effective immediately for an indefinite period until further order of the Court. A copy of such order shall be served upon the attorney, the attorney's guardian, and/or the director of the institution to which the attorney had been committed in such manner as the Court may direct.

27.2. Whenever during the course of an investigation pursuant to Section 15.1 or formal proceedings pursuant to Section 15.2, Disciplinary Counsel obtains information calling into question the mental or physical health of the respondent attorney that raises a substantial concern regarding the respondent attorney's capacity to continue the practice of law or to respond to or defend against a complaint, Disciplinary Counsel should request the respondent attorney to agree voluntarily to submit to an evaluation by the Tennessee Lawyer Assistance Program or an examination by a qualified medical or mental health expert to determine respondent attorney's capacity and report the results of the examination to Disciplinary Counsel and to the respondent attorney and the respondent attorney's counsel. In the event the respondent attorney declines to submit to such evaluation or examination and reporting, Disciplinary Counsel should file a petition with the Court for an order requiring the respondent attorney to submit to an evaluation by the Tennessee Lawyer Assistance Program or an examination by a qualified medical or mental health expert as the Court shall designate, the results of either of which shall be reported to Disciplinary Counsel, the Court, and the respondent attorney and the respondent attorney's counsel. Failure to comply with an order issued under this Subsection may serve as the basis for temporary suspension pursuant to Section 12.3.

27.3. The Board may petition the Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and an attorney, with no disciplinary proceeding or complaint pending, may petition to be transferred to disability inactive status. If such a petition is filed, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical or mental health experts as the Court shall designate or assignment to a hearing panel for a formal hearing to determine the issue of capacity. If the Board petitions the Court, the burden of proof shall be upon the Board and shall be by a preponderance of the evidence. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to disability inactive status on the ground of such disability for an indefinite period and until the further order of the Court. If the Board files a petition pursuant to this Section while a disciplinary proceeding is pending against the respondent attorney, the disciplinary proceeding shall be suspended pending the determination as to the attorney's alleged incapacity.

27.4.

(a) If, during the course of a disciplinary investigation or proceeding involving an attorney who presently is not suspended or disbarred, the

respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to practice law. Disciplinary Counsel, the respondent attorney or the attorney for the respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court thereupon may enter an order immediately transferring the respondent attorney to disability inactive status for an indefinite period and until the further order of the Court. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

(b) If, during the course of a disciplinary investigation or proceeding involving an attorney who is suspended or disbarred, the respondent attorney contends that he/she is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which disability makes it impossible for the respondent attorney to respond to or defend against the complaint, such contention shall place at issue the respondent attorney's capacity to continue to the disciplinary proceedings. Disciplinary Counsel, the respondent attorney or the attorney for the respondent attorney shall file in the Nashville office of the Clerk of the Supreme Court a Notice advising the Court of such contention within ten days of learning of the contention, if the Court has not been otherwise notified. The Court may take or direct such action as it deems necessary or proper to make a determination as to the respondent attorney's capacity to respond to or defend against the complaint, including the examination of the respondent attorney by such qualified medical or mental health experts as the Court shall designate or the referral of the matter to a hearing panel for a formal hearing to determine the respondent attorney's capacity to continue to practice law and to respond to or defend against the complaint. In any such proceeding, the burden of proof shall rest upon the respondent attorney and shall be by a preponderance of the evidence.

(c) If the Court or hearing panel determines that the respondent attorney is incapacitated from responding to or defending against the complaint, the Court or hearing panel shall take such action as it deems proper and advisable, including a direction for the suspension of the disciplinary proceeding against the respondent attorney.

(d) If the investigation of complaints or disciplinary proceedings has been suspended pursuant to this Section, the Board may petition the Court to

require the disabled attorney to provide competent evidence from qualified medical or mental health experts that his or her condition continues to be such that the disabled attorney is not capable of responding to pending disciplinary complaints, or to submit to an examination by such independent qualified medical or mental health experts as the Court shall designate in order to determine whether the condition continues to be such that the disabled attorney is not capable of responding to pending complaints or defending against disciplinary proceedings. The results of such examination shall be reported to the Disciplinary Counsel, the Court and the attorney and the attorney's counsel. In the event such experts determine that the attorney has recovered from the disability to the point that the attorney is capable of defending against allegations of misconduct, the Board may petition the Court for an order permitting the disciplinary proceedings to be reactivated. If the Board files such a petition, the burden of proof shall rest upon the Board and shall be by a preponderance of the evidence. Should the Court permit the disciplinary proceedings to proceed, the cost of the independent medical or mental health examinations shall be charged to the respondent attorney. [Amended effective October 7, 2020.]

Compiler's Notes. In its order dated October 7, 2020, the Supreme court provided that, "On September 1, 2020, this Court entered an order soliciting written comments on a proposed amendment to Tennessee Supreme Court Rule 9, section 27.4, as it pertains to the status of an attorney seeking transfer to disability inactive status during the course of disciplinary proceedings.

"The deadline for submitting written comments was October 1, 2020. The Board of Pro-

fessional Responsibility ("BPR") filed a comment on September 14, 2020, stating that it supports the proposed amendment. The BPR's comment was the only comment the Court received during the comment period.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 27.4, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

NOTES TO DECISIONS

1. Burden of Proof.

Attorney did not show by a preponderance of the evidence that he lacked the capacity, by reason of mental illness, to respond to or defend against his disciplinary complaint because, although the attorney submitted proof that he had generalized anxiety disorder and suicidal ideations, and a social worker wrote that the attorney tied his anxiety and suicidal ideations to his disciplinary proceedings, the social

worker did not opine whether the attorney's mental illness had any impact on his capacity to respond to or defend against the disciplinary complaint; and the attorney did not testify that his disability made it impossible for him to respond to or defend himself against the complaint. *Mabry v. Bd. of Prof'l Responsibility*, 563 S.W.3d 192, 2018 Tenn. LEXIS 727 (Tenn. Dec. 4, 2018).

27.5. The Board shall cause a notice of transfer to disability inactive status to be published pursuant to Section 28.11.

27.6. Whenever an attorney has been transferred to disability inactive status pursuant to either Section 27.1 or Section 27.3; or, whenever the Board, pursuant to Section 27.2, petitions the Court to determine that an attorney is disabled or incapacitated from continuing the practice of law, the Board shall request such action under the provisions of Section 29 as may be indicated in order to protect the interests of the disabled or allegedly disabled attorney and the attorney's clients.

27.7.

(a) No attorney transferred to disability inactive status pursuant to Section 27 may resume active status until reinstated by order of the Court. Any attorney transferred to disability inactive status pursuant to Section 27 shall be entitled to petition for reinstatement to active status after the disability is removed. The petition for reinstatement shall be filed with the Court in the form adopted by the Board. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The answer shall include a recommendation as to whether the petition should be granted without a hearing or referred to a hearing panel for a hearing.

(b) Upon the filing of a petition for reinstatement pursuant to Section 27, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by such qualified medical or mental health experts as the Court shall designate and the furnishing of such expert's report to the Board, the Court, and the attorney and the attorney's counsel. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the Board of Law Examiners of the successful completion of an examination for admission to practice. The Court also may refer the petition to a hearing panel for a hearing in which the petitioner shall have the burden of proof. The hearing shall be governed by Section 30.4. The petition shall be granted upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law.

(c) Pending disciplinary complaints against the attorney, whether filed before or after the attorney's transfer to disability inactive status, must be resolved before the effective date of any reinstatement. Provided, however, that the Court may order reinstatement pending the completion of any conditional disciplinary action (e.g., probation or restitution) imposed upon the attorney or the final completion of the terms of any agreement executed by the attorney and the Tennessee Lawyer Assistance Program.

27.8. Where an attorney has been transferred to disability inactive status by an order in accordance with Section 27.1 and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, this Court may dispense with further evidence that the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as the Court deems proper and advisable.

27.9. The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since the transfer to disability inactive status,

and shall furnish to the Court written consent to each to divulge such information and records as requested by court appointed medical experts.

Section 28. Notice to Clients, Adverse Parties, and Other Counsel

28.1. Effective Date of Order. Orders imposing disbarment, suspension, transfers to disability inactive status, or temporary suspension are effective upon entry.

28.2. Recipients of Notice; Contents. By no later than ten days after the effective date of the order, the respondent attorney shall notify or cause to be notified by registered or certified mail, return receipt requested:

(a) all clients being represented in pending matters;

(b) all co-counsel in pending matters; and

(c) all opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties,

of the order of the Court and that the attorney is therefore disqualified to act as attorney after the effective date of the order except as permitted by Section 12.3(c). The notice to be given to the attorney(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the last known address of the client of the respondent attorney. The notice shall inform the recipient of the effective date of the suspension and the effect it will have on the attorney's representation of the client in the applicable matter.

NOTES TO DECISIONS

1. Suspension.

Because the spirit of the trial court's orders suspending an attorney from the practice of law in the Circuit Courts of Davidson County was effectively identical to that of the supreme court order suspending the attorney from the practice of law throughout the State of Tennessee, the attorney's issues with the restrictions

contained in the trial court orders were rendered moot; a review of the rule revealed provisions for restrictions similar to those contained in the trial court orders. *Shao ex rel. Shao v. HCA Health Servs. of Tenn.*, — S.W.3d —, 2019 Tenn. App. LEXIS 457 (Tenn. Ct. App. Sept. 16, 2019).

28.3. Special Notice. The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

28.4. Duty to Maintain Records. The respondent attorney shall keep and maintain records of the steps taken to accomplish the requirements of Sections 28.1 and 28.2 and shall make those records available to Disciplinary Counsel on request.

28.5. Return of Client Property. The respondent attorney shall deliver to all clients any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

28.6. Refund of Fees. By no later than fifteen days after the effective date of the order, the respondent attorney shall refund any part of any fees, expenses, or costs paid in advance that has not been earned or expended, unless the order directs otherwise.

28.7. Withdrawal from Representation. The respondent attorney shall within twenty days after the effective date of the order file in the court, agency or tribunal in which the proceeding is pending a motion for leave to withdraw or a motion or agreed order to substitute and shall serve a copy of the motion or agreed order on opposing counsel or the adverse party, if unrepresented, in the proceeding.

28.8. New Representation Prohibited. The respondent attorney shall not undertake any new legal matters on or after the effective date of the order. By no later than twenty days after the effective date of the order, the respondent attorney shall cease to maintain a presence or occupy an office where the practice of law is conducted, except as provided in Section 12.3(c), and shall take such action as is necessary to cause the removal of any indicia of attorney, lawyer, counselor at law, legal assistant, law clerk, or similar title.

NOTES TO DECISIONS

1. Suspension.

Because the spirit of the trial court's orders suspending an attorney from the practice of law in the Circuit Courts of Davidson County was effectively identical to that of the supreme court order suspending the attorney from the practice of law throughout the State of Tennessee, the attorney's issues with the restrictions

contained in the trial court orders were rendered moot; a review of the rule revealed provisions for restrictions similar to those contained in the trial court orders. *Shao ex rel. Shao v. HCA Health Servs. of Tenn.*, — S.W.3d —, 2019 Tenn. App. LEXIS 457 (Tenn. Ct. App. Sept. 16, 2019).

28.9. Affidavit Filed with Board. Within twenty days after the effective date of the order, the respondent attorney shall file with the Board an affidavit or declaration under penalty of perjury showing:

- (a) Compliance with the provisions of the order and with Section 28;
- (b) All other state, federal, and administrative jurisdictions to which the attorney is admitted to practice;
- (c) Place of residence and all addresses where communications may thereafter be directed; and
- (d) Service of a copy of the affidavit or declaration under penalty of perjury upon Disciplinary Counsel, which shall include proof of compliance with Section 28.2.

28.10. Reinstatement. Proof of compliance with Section 28 shall be a condition precedent to any petition for reinstatement.

28.11. Publication of Notice. The Board shall provide a notice of the disbarment, suspension, disability inactive status, temporary suspension or reinstatement to all State judges and to the Tennessee Bar Association, and shall cause the same to be published in a newspaper of general circulation in each county in which the respondent attorney maintained an office for the

practice of law, and to be published in such other publications as the Board may determine to be appropriate.

Section 29. Appointment of a Receiver when an Attorney Becomes Unable to Continue the Practice of Law

29.1. The purpose of this Section is to protect clients and, to the extent possible and not inconsistent with the protection of clients, to protect the interests of the attorney to whom this rule applies.

29.2. Appointment of a Receiver Attorney.

(a) For purposes of this Section, an “affected attorney” is an attorney who is licensed and engaged in the practice of law in this State and who has no partner, associate, executor, or other appropriate successor or representative capable and available to continue or wind-down the attorney’s law practice.

(b) If an affected attorney has: (1) resigned or been suspended or disbarred from the practice of law; (2) disappeared or abandoned the practice of law; (3) become disabled or incapacitated or otherwise become unable to continue the practice of law or has been transferred to disability inactive status pursuant to Section 27 of this Rule; or (4) died, the Board of Professional Responsibility, the Tennessee Bar Association or any local bar association, any attorney licensed to practice law in this state, or any other interested person may commence a proceeding in the chancery, circuit, or probate court for the county in which the affected attorney maintained an office for the practice of law for the appointment of an attorney who is licensed to practice law in this state and in good standing with the Board of Professional Responsibility to serve as a receiver attorney to wind-down the law practice of the affected attorney.

(c) The proceeding shall be commenced by the filing of a complaint setting forth the pertinent facts, which shall be verified or accompanied by the affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts. To the extent practicable, the complaint and any accompanying affidavit or declaration under penalty of perjury shall be served upon the affected attorney or the guardian, conservator, or personal representative of the affected attorney if one has been appointed and qualified.

(d) If the trial court determines upon a showing by a preponderance of the evidence that the appointment of a receiver attorney is necessary to protect the interests of the affected attorney’s clients or the interests of the affected attorney, the trial court shall appoint one or more receiver attorneys. The order of the trial court may be appealed to the Court by the affected attorney or by the guardian or personal representative of the affected attorney, or by the complainant.

29.3. Duties and Authority of a Receiver Attorney.

(a) The receiver attorney shall:

(1) take custody of the files, records, bank accounts, and other property of the affected attorney’s law practice;

(2) review the files and other papers to identify any pending matters;

(3) notify all clients represented by the affected attorney in pending matters of the appointment of the receiver attorney and suggest that it may be in their

best interest to obtain replacement counsel;

(4) notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of a receiver attorney for the affected attorney;

(5) deliver the files, money, and other property belonging to the clients of the affected attorney pursuant to the client's directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property if fees or disbursements for past services rendered are owed to the affected attorney by the client; and

(6) take such steps as seem indicated to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the affected attorney's clients, to protect the interests of the affected attorney. If the receiver attorney determines that conflicts of interest exist between the receiver attorney and a client of the affected attorney, the receiver attorney shall notify the court of the existence of the conflict of interest with regard to the particular matters and the receiver attorney shall take no action with regard to those cases or files.

(b) The order appointing the receiver attorney shall specifically authorize the receiver attorney to take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the affected attorney in connection with the affected attorney's law practice, including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts, and special accounts, and to disburse funds to clients of the affected attorney or others entitled thereto, and take all appropriate actions with respect to such accounts.

(c) The receiver attorney shall take reasonable efforts to safeguard all property in the offices of the affected attorney and to collect any outstanding attorney's fees, costs, and expenses to which the affected attorney is entitled and shall make appropriate arrangements for the prompt resolution of any disputes concerning outstanding attorney's fees, costs, and expenses.

(d) To the extent possible, the receiver attorney shall assist and cooperate with the affected attorney and the guardian or personal representative of the affected attorney in the transition, sale, or winding-down of the affected attorney's law practice. The receiver attorney may purchase the law practice of the affected attorney only upon the trial court's approval of such sale.

(e) The trial court may order the receiver attorney to submit interim and final accountings, as it deems appropriate. The trial court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the affected attorney to be filed under seal.

29.4. Protection of Client Information and Privilege. The appointment of the receiver attorney shall not be deemed in any manner to create the relationship of attorney and client between the receiver attorney and any client of the affected attorney. However, the attorney-client privilege shall apply to all communications by or between the receiver attorney and the clients of the affected attorney to the same extent as it would have applied to any communications by or to the affected attorney, and the receiver attorney shall be governed by Rule 1.6 of the Tennessee Rules of Professional Conduct

with respect to all information contained in the files of the affected attorney's clients and any information relating to the matters in which the clients were being represented by the affected attorney.

29.5. Protection of Client Files and Property. The trial court shall have jurisdiction over all of the files, records, and property of clients of the affected attorney and may make any orders necessary or appropriate to protect the interests of the clients of the affected attorney and, to the extent possible and not inconsistent with the protection of clients, the interests of the affected attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the affected attorney.

29.6. Fees and Expenses of the Receiver Attorney.

(a) The receiver attorney shall be entitled to reasonable fees in compensation for performance of the receiver attorney's duties and reimbursement for actual and reasonable costs incurred by the receiver attorney in connection with the performance of the receiver attorney's duties. Reimbursable expenses shall include, but not be limited to, the actual and reasonable costs incurred in connection with maintaining the staff, offices, and operation of the affected attorney's law practice and the employment of attorneys, accountants, and others retained by the receiver attorney in connection with carrying out the receiver attorney's duties.

(b) The receiver attorney shall file an application for fees and expenses with the trial court, which shall determine the amount of such fees and reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the trial court of all funds and property coming into the custody of the receiver attorney.

(c) Any fees and expenses awarded by the trial court to the receiver attorney shall be paid by the affected attorney or the estate of the affected attorney or from such other available sources as the court may direct. The order of the trial court awarding the fees and expenses shall be a judgment against the affected attorney or the estate of the affected attorney. The judgment shall be a lien upon all property of the affected attorney or the estate of the affected attorney retroactive to the date of filing of the complaint for the appointment of a receiver attorney under this Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

29.7. Limitation of Liability. Any person serving as a receiver attorney under this Rule shall be immune from suit for any conduct undertaken in good faith in the course of the official duties of the receiver attorney.

29.8. Employment of the Receiver as Attorney for a Client. A receiver attorney shall not, without the informed written consent of the client and the permission of the trial court, represent a client in a pending matter in which the client was represented by the affected attorney, other than to temporarily protect the interests of the client, or unless and until the receiver attorney has

concluded the purchase of the law practice of the affected attorney. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver attorney.

29.9. Advance Designation of a Receiver or Successor Attorney. An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or assist in the continued operation, sale, or closing of the attorney’s law practice in the event of such attorney’s death, incapacity or unavailability. In the event an attorney to whom this rule applies has made adequate provision for the protection of his or her clients, such provision shall govern to the extent consistent with this Rule unless the trial court or the Court determines, upon a showing of good cause, that the provisions for the appointment of a receiver attorney under this Rule should be invoked. After a complaint for the appointment of a receiver attorney has been filed, the affected attorney or the guardian, conservator, or personal representative of the affected attorney may designate a successor attorney and the trial court shall respect such designation unless the trial court determines, upon a showing of good cause, that such designation should be set aside.

29.10. Effect on Pending Cases. Upon entry of the order appointing a receiver attorney, any applicable statute of limitations, deadline, time limit, or return date for a filing as it relates to the clients of the affected attorney shall be tolled during the period from the date of the filing of the complaint for the appointment of a receiver attorney until the first regular business day that is not less than sixty (60) days after the date of the entry of the order appointing the receiver attorney, if it would otherwise expire before the extended date.

Section 30. Reinstatement

30.1. No attorney disbarred; suspended under any section of this Rule or under Rule 21 or Rule 43 of the Rules of the Tennessee Supreme Court; on disability inactive status under Section 27 of this Rule; or who has remained on inactive status under Section 10.8 of this Rule for over five years before filing a petition for reinstatement to active status, may resume practice until reinstated by order of the Court.

30.2. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement. Individuals disbarred under Rule 9 prior to July 1, 2020, may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. [Amended by order filed and effective January 23, 2020.]

Compiler’s Notes. In its order dated January 23, 2020, the Supreme court provided that, “On September 18, 2019, the Court entered an order soliciting public comments for proposed amendments to Tennessee Supreme Court Rule 9, sections 8, 12, and 30. The deadline for submitting written comments was December 17, 2019. The Court received written comments

during the comment period from the Tennessee Bar Association (“TBA”), the Knoxville Bar Association (“KBA”), the Board of Professional Responsibility (“BPR”), David Steele, Esq., and Elliott J. Schuchardt, Esq.
“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 8, 12 and 30, as set out in

the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

30.3. Reinstatement from Administrative Suspension or Inactive Status.

(a) Reinstatement from administrative suspension for non-payment of the Board’s annual registration fee shall be pursuant to Section 10.6(d) of this Rule.

(b) Reinstatement from administrative suspension for IOLTA non-compliance shall be pursuant to Sections 15 and 16 of Rule 43 of the Rules of the Tennessee Supreme Court.

(c) Reinstatement from administrative suspension for failure to pay the Professional Privilege Tax shall be pursuant to Section 26.4(d) of this Rule.

(d) Reinstatement from inactive status, other than disability inactive status, shall be pursuant to Section 10.8 of this Rule.

(e) Reinstatement from disability inactive status shall be pursuant to Sections 27.7, 27.8 and 27.9 of this Rule.

(f) Reinstatement from temporary suspension shall be pursuant to Section 12.3(d) of this Rule.

(g) Reinstatement from administrative suspension for non-compliance with continuing legal education requirements shall be pursuant to Section 7 of Rule 21 of the Rules of the Tennessee Supreme Court.

(h) Reinstatement from administrative suspension for default on student loan or service-conditional scholarship program shall be pursuant to Section 37 of this Rule.

(i) The Court may require an attorney seeking reinstatement from suspension or inactive status under any of the foregoing provisions and who has remained suspended or inactive for more than five years before the filing of a petition for reinstatement and/or application for reinstatement to establish proof of competency and learning in law which proof may include certification by the Board of Law Examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status, and to establish proof of compliance with all other applicable rules and regulations. [Amended by order filed and effective December 1, 2016; amended by order filed and effective January 23, 2020.]

Compiler’s Notes. In its order filed December 1, 2016, the Supreme Court provided: “On September 7, 2016, the Court filed an order soliciting written comments concerning proposed amendments to Rule 7, section 16.01 and Rule 9, section 30.3 of the Rules of the Tennessee Supreme Court. The public-comment period expired on October 10, 2016. The Court received only one written comment, a comment filed by the Tennessee Bar Association on November 10, 2016.”

“After due consideration, the Court hereby adopts the amendments to Rule 7, section 16.01 and Rule 9, section 30.3 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall

take effect immediately upon the filing of this Order.”

In its order dated January 23, 2020, the Supreme court provided that, “On September 18, 2019, the Court entered an order soliciting public comments for proposed amendments to Tennessee Supreme Court Rule 9, sections 8, 12, and 30. The deadline for submitting written comments was December 17, 2019. The Court received written comments during the comment period from the Tennessee Bar Association (“TBA”), the Knoxville Bar Association (“KBA”), the Board of Professional Responsibility (“BPR”), David Steele, Esq., and Elliott J. Schuchardt, Esq.

“After due consideration, the Court hereby

adopts the amendments to Tennessee Supreme Court Rule 9, sections 8, 12 and 30, as set out in the attached Appendix. The amendments shall

take effect immediately upon the filing of this Order.”

30.4. Reinstatement from Disbarment or Disciplinary Suspension.

(a) Reinstatement other than as set forth in Section 30.3 of this Rule shall be pursuant to this Section, regardless of when or under what procedure the suspension or disbarment occurred.

(b) No petition for reinstatement shall be filed more than ninety days prior to the time the attorney shall first be eligible for reinstatement.

(c) An attorney who wishes to be reinstated, who has been suspended by the Court for a period of one year or less or for an indefinite period, and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board and serve upon Disciplinary Counsel promptly a petition for reinstatement of the attorney’s license to practice law demonstrating that the petitioning attorney has the moral qualifications, competency and learning in law required for admission to practice law in this state, that the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that the petitioning attorney has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against the attorney in any appeal from such proceeding. If the petition is satisfactory to the Board and if the attorney otherwise is eligible for reinstatement, the Board, or the Chief Disciplinary Counsel acting on its behalf, shall promptly file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of a proposed Reinstatement Order. For purposes of this filing, the same appeal number shall be used as previously was assigned to the order which suspended the attorney. If the petition is unsatisfactory to the Board, Disciplinary Counsel shall file and serve upon the petitioning attorney a responsive pleading to the petition and the matter shall proceed as provided in Subsection (d).

(d) An attorney who wishes to be reinstated and who has been disbarred by the Court, or who has been suspended by the Court for a period of more than one year, or who has been suspended by the Court for a period of one year or less or an indefinite period but has remained suspended for more than one year before the filing of a petition for reinstatement, shall file with the Board and serve upon Disciplinary Counsel promptly a petition for reinstatement. Upon receipt of the petition, Disciplinary Counsel shall investigate the matter and file and serve upon the petitioning attorney a responsive pleading to the petition. The Board shall promptly refer the petition to a hearing panel in the disciplinary district in which the petitioning attorney maintained an office at the time of the disbarment or suspension. Individuals disbarred on or after July 1, 2020, are not eligible for reinstatement.

(1) The hearing panel shall schedule a hearing at which the petitioning attorney shall have the burden of demonstrating by clear and convincing evidence that the petitioning attorney has the moral qualifications, competency and learning in law required for admission to practice law in this state,

that the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that the petitioning attorney has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against the attorney in any appeal from such proceeding.

(2) In all proceedings upon a petition for reinstatement, cross-examination of the petitioning attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

(3) If the petitioning attorney is found unfit to resume the practice of law, the decision of the hearing panel shall dismiss the petition. If the petitioning attorney is found fit to resume the practice of law, the decision of the hearing panel shall reinstate the petitioning attorney.

(4) The hearing panel shall within thirty days file a report containing its findings and decision and transmit its report, together with the record, to the Board.

(5) There shall be no petition for rehearing. Either party dissatisfied with the hearing panel's decision may appeal as provided in Section 33.

(6) If neither party appeals as provided in Section 33, the Board shall file in the Nashville office of the Clerk of the Supreme Court a Notice of Submission with an attached copy of the record of the proceedings before the hearing panel together with its report approving same. The Court will take such action upon the record so transmitted as it deems appropriate.

(7) With respect to suspended or disbarred attorneys, the hearing panel or reviewing court may impose conditions on the petitioning attorney's reinstatement, including, without limitation, certification by the Board of Law Examiners of the successful completion of an examination for admission to practice; the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9; the completion of a practice and professionalism enhancement program; the making of restitution required pursuant to Section 12.7; and, the payment of all or part of the costs of the proceeding.

(8) The petitioning attorney shall pay the costs associated with the conditions of reinstatement, including without limitation a reasonable fee to the practice monitor pursuant to the procedures in Section 12.9(d).

(9) Petitions for reinstatement under this Section shall be accompanied by an advance cost deposit in an amount to be set from time-to-time by the Board to cover anticipated costs of the reinstatement proceeding. All advance cost deposits collected hereunder shall be deposited by the Board with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Board. Withdrawals from those funds shall only be made by the Board to cover costs of reinstatement proceedings, and reimbursement of advance cost deposits not expended. Such advance cost deposit funds shall be maintained, managed, and administered solely and exclusively by the Board. (Amended by order filed October 3, 2013, effective January 1, 2014; and further amended by order filed October 3, 2014; amended by order filed and effective January 23, 2020.)

Compiler’s Notes. In its order dated January 23, 2020, the Supreme court provided that, “On September 18, 2019, the Court entered an order soliciting public comments for proposed amendments to Tennessee Supreme Court Rule 9, sections 8, 12, and 30. The deadline for submitting written comments was December 17, 2019. The Court received written comments during the comment period from the Tennessee Bar Association (“TBA”), the Knoxville Bar As-

sociation (“KBA”), the Board of Professional Responsibility (“BPR”), David Steele, Esq., and Elliott J. Schuchardt, Esq.

“After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 8, 12 and 30, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

NOTES TO DECISIONS

ANALYSIS

- 1. Constitutionality.
- 2. Pre-2014 Disciplinary Proceedings.

1. Constitutionality.

Requiring the suspended attorney to pay in advance a deposit on the costs of his reinstatement proceeding pursuant to Tenn. Sup. Ct. R. 9, § 30.4(d)(9), did not violate substantive due process as a license to practice law was a privilege, not a right. *Brooks v. Bd. of Prof'l Responsibility*, 578 S.W.3d 421, 2019 Tenn. LEXIS 173 (Tenn. May 7, 2019).

Requiring the suspended attorney to pay in advance a deposit on the costs of his reinstatement proceeding pursuant to Tenn. Sup. Ct. R. 9, § 30.4(d)(9), did not violate procedural due process where the suspended attorney occasioned the suspension of his law license by admittedly engaging in serious misconduct involving multiple clients. *Brooks v. Bd. of Prof'l Responsibility*, 578 S.W.3d 421, 2019 Tenn. LEXIS 173 (Tenn. May 7, 2019).

2. Pre-2014 Disciplinary Proceedings.

Supreme court’s order promulgating 2014 Tenn. Sup. Ct. R. 9 and disciplinary decisions

since January 1, 2014 make clear that pre-2014 Rule 9 applies to disciplinary matters initiated before January 1, 2014; the reinstatement provisions of 2014 Rule 9 apply retroactively because the rule requires it. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Based on the clearly stated intent in the supreme court’s order adopting revised Rule 9, Rule 9 applies to cases filed or initiated on or after January 1, 2014, and pre-2014 Rule 9 applies to cases filed or initiated before January 1, 2014; thus, in assessing costs, the operative date is when the case was filed or initiated, not when the supreme court granted reinstatement. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Language of the rule does not indicate that the order imposing discipline must include an assessment of the costs of the Tennessee Board of Professional Responsibility; payment of the Board’s fees, whether assessed by the Board under pre-2014 Rule 9 or by the tribunal under 2014 Rule 9, is a condition precedent to petitioning for reinstatement. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

30.5. Successive Petitions. No petition for reinstatement under this Rule, except for petitions for reinstatement under Section 27, shall be filed within two years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person, unless otherwise ordered by the Court in denying the petition for reinstatement.

30.6. After the effective date of an order accepting the surrender of a license to practice law pursuant to Article XV of Rule 7 of the Rules of the Tennessee Supreme Court, the license shall not be reinstated, and the attorney may not be licensed to practice law in Tennessee until he or she applies for a license in Tennessee and meets the requirements of Rule 7 of the Rules of the Tennessee Supreme Court.

Section 31. Expenses, Audit, Reimbursement of Costs

31.1. Expenses. The salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board

and of members of the district committees shall be paid by the Board out of the funds collected under the provisions of this Rule.

31.2. Accounting. The Administrative Office of the Courts performs accounting functions for the Board, either directly or through its oversight and final approval of transactions performed by Board personnel.

31.3. Reimbursement of Costs.

(a) In the event that a judgment of disbarment, suspension, public censure, temporary suspension, disability inactive status, reinstatement, or denial of reinstatement results from formal proceedings, Disciplinary Counsel shall within fifteen days from the hearing panel's submission of such judgment pursuant to Section 15.3 make application to the hearing panel for the assessment against the respondent or petitioning attorney of the necessary and reasonable costs of the proceedings, including court reporter's expenses for appearances and transcription of all hearings and depositions, the expenses of the hearing panel in the hearing of the cause, and the hourly charge of Disciplinary Counsel in investigating and prosecuting, and shall serve a copy of such application on respondent or petitioning attorney and the petitioning attorney's counsel of record pursuant to Section 18.2. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel in investigating and prosecuting the complaint or responding to the petition for reinstatement. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary Counsel's application submit to the hearing panel and serve on Disciplinary Counsel pursuant to Section 18.2 any response in opposition to the application for an assessment of costs. The burden shall be upon respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. Disciplinary Counsel or the respondent or petitioning attorney may request a hearing before the hearing panel, in which event, the hearing panel shall promptly schedule the same. The hearing panel shall within fifteen days from the conclusion of such hearing, or in the event no hearing is requested, within fifteen days from the date on which the respondent or petitioning attorney's response is due or is submitted, whichever is earlier, submit to the Board its findings and judgment with respect to Disciplinary Counsel's application for the assessment of costs. There shall be no petition for rehearing. The making of an application under this Section shall extend the time for taking steps in the regular appellate process under Section 33.1(a) unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise.

(b) In the event that a judgment as set forth in Subsection (a) is appealed to the circuit or chancery court pursuant to Section 33 and the Board is the prevailing party in such appeal, Disciplinary Counsel may make application to the circuit or chancery court for the assessment against the respondent or

petitioning attorney of the necessary and reasonable costs of the trial court proceedings, including court reporter's expenses for appearances and transcription of all hearings and depositions and the hourly charge of Disciplinary Counsel for the trial court proceedings. Disciplinary Counsel shall file any such application within fifteen days from the circuit or chancery court's decree and shall serve a copy of such application on respondent or petitioning attorney and the attorney's counsel of record. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel for the trial court proceedings. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary counsel's application file and serve on Disciplinary Counsel any response in opposition to the application for an assessment of costs. The burden shall be upon the respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. The circuit or chancery court may consider the application on the written submissions alone or may, in the court's discretion, conduct a hearing on the application. In the event the circuit or chancery court considers the application on the written submissions alone, the court shall within fifteen days from the date on which the respondent or petitioning attorney's response is due or submitted, whichever is earlier, enter and serve on the parties its findings and judgment with respect to the application for the assessment of costs. In the event the circuit or chancery court conducts a hearing on the application for costs, the court shall within fifteen days from the date of the hearing enter and serve on the parties its findings and judgment with respect to the application for the assessment of costs. The filing of an application under this Section shall extend the time for appeal to the Court under Section 33.1(d) and Tenn. R. App. P. 4.

(c) In the event that the decree of the circuit or chancery court is appealed to the Court pursuant to Section 33 and the Board is the prevailing party in such appeal, Disciplinary Counsel may make application to the Court for the assessment against the respondent or petitioning attorney of the necessary and reasonable costs of the proceedings before the Court, including court reporter's expenses for appearances and transcription of all hearings and depositions and the hourly charge of Disciplinary Counsel for the proceedings before the Court. Disciplinary Counsel shall file any such application within fifteen days from the Court's judgment and shall serve a copy of such application on respondent or petitioning attorney and the attorney's counsel of record. The application shall be accompanied by an affidavit or declaration under penalty of perjury and such other documentary evidence as Disciplinary Counsel deems appropriate documenting the hours expended and the costs incurred by Disciplinary Counsel for the proceedings in the Court. Such proof shall create a rebuttable presumption as to the necessity and reasonableness of the hours expended and the costs incurred. The respondent or petitioning attorney may within fifteen days after Disciplinary counsel's application file and serve on Disciplinary Counsel any response in opposition to the applica-

tion for an assessment of costs. The burden shall be upon the respondent or petitioning attorney to prove by a preponderance of the evidence that the hours expended or costs incurred by Disciplinary Counsel were unnecessary or unreasonable. The Court shall consider the application on the written submissions.

(d) The provisions of subsections (a) - (c) shall not apply to costs assessed pursuant to a guilty plea in which the respondent or petitioning attorney has agreed to the payment of costs and the amount thereof.

(e) The hourly charges of Disciplinary Counsel on formal proceedings shall be assessed at the rates set forth in Tenn. Sup. Ct. R. 13, Section 2(c)(1) for compensation of counsel appointed for indigent criminal defendants in non-capital cases.

(f) Payment of the costs and fees assessed pursuant to this Section shall be required as a condition precedent to any later request for reinstatement of the respondent or petitioning attorney. In the discretion of the Chief Disciplinary Counsel, the respondent or petitioning attorney may, upon a showing of extraordinary need, be permitted to pay costs in periodic payments. If a payment plan is permitted, the respondent or petitioning attorney also shall pay the Board interest at the statutory rate. If for any reason, the respondent or petitioning attorney does not abide by the terms of the payment plan, the Chief Disciplinary Counsel may revoke the plan and the respondent or petitioning attorney shall be required to pay the balance of any unpaid assessment of costs within thirty days thereof.

(g) Attorneys successfully defending some or all disciplinary charges filed by the Board may not recover attorney's fees or costs from the Board.

NOTES TO DECISIONS

Pre-2014 Disciplinary Proceedings.

Tennessee Board of Professional Responsibility followed the correct procedure in assessing costs under the rule that was in effect when the 2013 disciplinary proceeding was initiated, because based on the supreme court's order promulgating revised Tenn. Sup. Ct. R. 9 and its subsequent decisions, the version of Rule 9 in effect when the disciplinary case was initiated in 2013 governed the assessment of costs regardless of when the supreme court reinstated the attorney to the practice of law. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

If the supreme court had intended for the section to apply to the assessment of costs in pre-2014 disciplinary proceedings, language to that effect would have been included; lack of such language in the section of 2014 Rule 9 shows that the supreme court did not intend for the section to apply retroactively to the assessment of costs in cases initiated before January 1, 2014. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Based on the clearly stated intent in the supreme court's order adopting revised Rule 9,

Rule 9 applies to cases filed or initiated on or after January 1, 2014, and pre-2014 Rule 9 applies to cases filed or initiated before January 1, 2014; thus, in assessing costs, the operative date is when the case was filed or initiated, not when the supreme court granted reinstatement. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Supreme court's order promulgating 2014 Tenn. Sup. Ct. R. 9 and disciplinary decisions since January 1, 2014 make clear that pre-2014 Rule 9 applies to disciplinary matters initiated before January 1, 2014; the reinstatement provisions of 2014 Rule 9 apply retroactively because the rule requires it. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Language of Tenn. Sup. Ct. R. 9, § 30.4 does not indicate that the order imposing discipline must include an assessment of the costs of the Tennessee Board of Professional Responsibility; payment of the Board's fees, whether assessed by the Board under pre-2014 Rule 9 or by the tribunal under 2014 Rule 9, is a condition precedent to petitioning for reinstatement. In *re Parrish*, — S.W.3d —, 2021 Tenn. LEXIS 57 (Tenn. Mar. 8, 2021).

Section 32. Confidentiality

32.1. All matters, investigations, or proceedings involving allegations of misconduct by or the disability of an attorney, including all information, records, minutes, correspondence, files or other documents of the Board, district committee members and Disciplinary Counsel shall be confidential and privileged, and shall not be public records or open for public inspection, except as otherwise provided in this Section.

All hearings held before a duly appointed hearing panel or Court, except those pursuant to Section 27, shall be public, subject to the provisions of Section 32.6 and Tenn. Sup. Ct. R. 30. [Amended by order filed and effective on August, 30, 2017.]

Compiler's Notes. In its order filed August 30, 2017, the Supreme Court provided that: "On March 13, 2017, the Tennessee Board of Professional Responsibility ("BPR") filed a petition asking the Court to amend Rule 9, section 32 of the Rules of the Tennessee Supreme Court. The petition proposed to amend the rule section in order to clarify that hearings are open to the public, unless subject to a protective order."

"On April 18, 2017, the Court entered an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was June 19, 2017. The Court received written comments during the

comment period from Daniel C. Todd and the Knoxville Bar Association ("KBA"). Both Mr. Todd and the KBA opposed the proposed amendments, expressing concern for issues that would arise from open hearings. The Court thanks Mr. Todd and the KBA for their input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, section 32, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order [August 30, 2017]."

Attorney General Opinions. Rights of persons who file attorney disciplinary complaints. OAG 12-17, 2012 Tenn. AG LEXIS 17 (2/21/12).

32.2. Upon (a) the Board's imposition of public discipline without the initiation of a formal disciplinary proceeding pursuant to Section 15.2, or (b) the filing of a petition for formal discipline pursuant to Section 15.2, the following documents, subject to the provisions of any protective order which may be entered pursuant to Section 32.6, shall be public records and open for public inspection:

- (i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or documents filed in the formal disciplinary proceeding;
- (ii) the written complaint(s) and any additional or supplemental submissions received by the Board;
- (iii) the written response(s) to the complaint received by the Board;
- (iv) the formal written public discipline imposed by the Board in the matter.

32.3. Upon receipt by the Board of a written request from a respondent attorney that a pending matter be made public, the following documents, subject to the provisions of any protective order which may be entered pursuant to Section 32.6, shall be public records and open for public inspection:

- (i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or documents filed in the formal disciplinary proceeding;
- (ii) the written complaint(s) and any additional or supplemental submissions received by the Board;
- (iii) the written response(s) to the complaint received by the Board;
- (iv) the formal written public discipline imposed by the Board in the matter.

32.4. In disability proceedings referred to in Section 27, the order transferring the respondent attorney to disability inactive status shall become a public record upon filing; however, all other documents relating to the respondent attorney's disability proceeding, including any subsequent petition for reinstatement after transfer to disability inactive status, shall not be public records and shall be kept confidential. An order granting a petition for reinstatement after transfer to disability inactive status shall become a public record upon filing.

32.5. Notwithstanding anything to the contrary herein, all work product and work files of the Board, district committee members, and Disciplinary Counsel, including but not limited to internal memoranda; internal correspondence, emails, and notes; investigative notes, statements and reports; and, similar documents and files, shall be confidential and privileged, shall not be public records, and shall not be subject to the provisions of Sections 32.2 and 32.3.

32.6. In order to protect the interests of a complainant, respondent or petitioning attorney, witness, or third party, the Board may, at any stage of the proceedings, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information or documents, or the closure of any hearing, and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application. After the initiation of a formal proceeding, any such application shall be filed with and decided by the assigned hearing panel.

32.7. All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality. However, unless a protective order has been entered, nothing in this Section or this Rule shall prohibit the complainant, respondent or petitioning attorney, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under this Rule or from disclosing any documents or correspondence filed by, served on, or provided to that person. The Board, district committee members, hearing panel members, Disciplinary Counsel, their assistants, staff and employees shall maintain confidentiality with respect to all pending matters, investigations and proceedings arising under this Rule, except as may be provided under Sections 32.2 and 32.3.

32.8. In those disciplinary proceedings in which an appeal is taken pursuant to Section 33, the records and hearing in the circuit or chancery court and in the Court shall be public to the same extent as in all other cases.

32.9. The provisions of this Rule shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates; or to other jurisdictions investigating qualifications for admission to practice; or to law enforcement agencies investigating qualifica-

tions for government employment; or to prevent the Board from reporting evidence of a crime by an attorney or other person to courts or law enforcement agencies; or to prevent the Board from reporting to the Tennessee Lawyer Assistance Program evidence of a disability that impairs the ability of an attorney to practice or serve; or to prevent the Board or Disciplinary Counsel from making available to the Tennessee Lawyers' Fund for Client Protection information relevant to any claim pending before the Fund; or to prevent the Board from making available all attorney registration information to the Tennessee Commission on Continuing Legal Education; the Lawyers' Fund for Client Protection; the Board of Law Examiners; and the Tennessee Lawyers Assistance Program; or to prevent the Board or Disciplinary Counsel from defending any action or proceeding now pending or hereafter brought against either of them. In addition, Chief Disciplinary Counsel shall transmit notice of all public discipline imposed by the Court on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association. [As amended by order filed March 28, 2016, effective immediately.]

Compiler's Notes. In its order filed March 28, 2016, the Supreme Court provided that:

"On December 28, 2015, the Board of Professional Responsibility ('Board') filed a petition seeking to amend Tennessee Supreme Court Rule 9, section 32.9, to allow the Board to share attorney registration information with other Supreme Court agencies such as the Tennessee Commission on Continuing Legal Education; the Lawyers' Fund for Client Protection; the Board of Law Examiners; and the Tennessee Lawyers Assistance Program. By Order filed January 28, 2016, the Court solicited public

comments on the Board's proposed amendment. The Court has received and considered public comments, including comments from the Tennessee Commission on Continuing Legal Education, the Board of Law Examiners, the Knoxville Bar Association, and the Tennessee Bar Association. After due consideration, the Court hereby adopts the amendment to Rule 9, section 32.9, of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. This amendment shall take effect immediately upon the filing of this Order."

32.10. Nothing in this Section is intended to limit or repeal any confidentiality or privilege afforded by other law.

Section 33. Appeal

33.1.

(a) The respondent or petitioning attorney or the Board may appeal the judgment of a hearing panel by filing within sixty days of the date of entry of the hearing panel's judgment a Petition for Review in the circuit or chancery court of the county in which the office of the respondent or petitioning attorney was located at the time the charges were filed with the Board. If the respondent or petitioning attorney was located outside this State, the Petition for Review shall be filed in the circuit court or chancery court of Davidson County, Tennessee. If a timely application for the assessment of costs is made under Section 31.3(a), the time for appeal for all parties shall run from the hearing panel's submission of its findings and judgment with respect to the application for the assessment of costs unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise. In the absence of such an application and order, a Petition for Review filed prior to the hearing panel's submission of its findings and judgment with respect to the application

for the assessment of costs shall be deemed to be premature and shall be treated as filed after the submission of the hearing panel's findings and judgment with respect to the assessment of costs and on the day thereof.

(b) The review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the hearing panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the hearing panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the hearing panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the hearing panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the hearing panel as to the weight of the evidence on questions of fact.

(c) There shall be no petitions for rehearing in the trial court.

(d) Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal directly to the Court where the cause shall be heard upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing panel. If a timely application for the assessment of costs is made under Section 31.3(b), the time for appeal for all parties shall run from the trial court's entry of its findings and judgment with respect to the application for the assessment of costs unless, upon application of the Board to the Court and for good cause shown, the Court orders otherwise. Absent such application and order, a Notice of Appeal filed prior to the trial court's entry of its findings and judgment with respect to the application for the assessment of costs shall be deemed to be premature and shall be treated as filed after the entry of the trial court's findings and judgment with respect to the assessment of costs and on the day thereof. Prior decisions of the Court holding that appeal of disciplinary proceedings must be taken to the Court of Appeals because Tenn. Code Ann. § 16-4-108 so requires are expressly overruled. Except as otherwise provided in this Rule, Tenn. R. App. P. 24, 25, 26, 27, 28, 29 and 30 shall apply to such appeals to this Court.

NOTES TO DECISIONS

ANALYSIS

1. Standard of Review.
2. Suspension.
3. Procedural Rules.
4. Review.
5. Aggravating Factors.
6. Mitigating Factors.

7. Dismissal.
8. Findings Supported by Substantial And Material Evidence.
9. Disbarment.

1. Standard of Review.

Standard of review only allows the Supreme Court of Tennessee to reverse or modify a decision of a hearing panel of the Tennessee

Board of Professional Responsibility if its findings are unsupported by evidence which is both substantial and material in light of the entire record. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Chancery court improperly substituted its judgment for that of the hearing panel, in modifying the hearing panel's findings to find additional conduct violations by an attorney, because the hearing panel did not resolve the issues, and without a specific finding, the chancery court could only speculate as to the hearing panel's intended conclusion. *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 2014 Tenn. LEXIS 630 (Tenn. Sept. 3, 2014).

While the attorney alleged irregularities, the trial court properly found that neither his offer of proof nor his expert testimony would have aided in the trial court's review of the proceedings, and thus neither was appropriate for the trial court to consider; some evidence was cumulative and would have been beyond the proper scope of the trial court's review, which as a general matter, is limited to the transcript of evidence that was before the panel, and the trial court did not abuse its discretion in excluding certain testimony. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

2. Suspension.

Chancery court improperly substituted its judgment for that of the hearing panel regarding the weight of the evidence because substantial and material evidence supported the hearing panel's finding that an attorney's behavior warranted suspension; the proof supported the hearing panel's finding that the attorney's conduct caused interference with a legal proceeding and actual or potential injury to the clients or parties, and the length of the suspension was appropriately tailored to the facts. *Bailey v. Bd. of Prof'l Responsibility*, 441 S.W.3d 223, 2014 Tenn. LEXIS 611 (Tenn. Aug. 18, 2014).

Trial court properly affirmed the decision of the Board of Professional Responsibility, which determined that an attorney had to be suspended, because the attorney's conduct of representing two clients with conflicting interests was egregious; the aggravating factors were prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law, and there were no mitigating factors. *Cody v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 471 S.W.3d 420, 2015 Tenn. LEXIS 584 (Tenn. July 27, 2015).

Hearing panel of the Board of Professional Responsibility acted arbitrarily and capriciously by probating the entirety of an attorney's suspension because it failed to find an

applicable aggravating factor, the vulnerability of the attorney's law partner victims, and the sanction it imposed was out of line with the sanctions in comparable cases; the hearing panel did not impose any conditions, probation monitoring, or supervision during the probationary period. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

One-year suspension imposed was appropriate because substantial and material evidence supported the conclusion that an attorney was not apologetic and did not acknowledge his conduct was wrongful; the attorney's refusal to acknowledge the wrongful nature of his conduct was properly considered as an aggravating factor in determining an appropriate sanction for his misconduct. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Hearing panel's findings of fact and conclusions of law supported suspension as the presumptive sanction under the American Bar Association's Standards for Imposing Lawyer Sanctions because the attorney failed to disclose material facts to an administrative law judge, and threatened the judge to coerce action favorable to his client, and made disparaging descriptions of the judge and the tribunal; his conduct impeded a resolution, which was prejudicial to the administration of justice. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

3. Procedural Rules.

Attorney was provided with the procedural rights listed in the rules, as he was given adequate notice of the disciplinary charges against him, had the opportunity to be represented by an attorney of his choosing, was able to cross-examine witnesses called against him, and had been given and fully utilized his opportunity to respond, and there were no procedural errors; he received due process throughout his disciplinary proceedings. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

4. Review.

Matter was ripe for adjudication by the hearing panel of the Tennessee Board of Professional Responsibility and the trial court did not err in declining to consider alleged post-judgment facts because the alleged violations did not necessarily involve the quality of the attorney's work, but rather, they involved the attorney's excessive billing, her billing practices, and her conduct after the clients terminated her representation. *Sallee v. Tenn. Bd. of Prof'l Responsibility*, 469 S.W.3d 18, 2015 Tenn. LEXIS 566 (Tenn. July 23, 2015).

It was error for a chancery court to modify a hearing panel's judgment and conclude there was a rule violation because the panel did not mention the rule in its findings of facts and failed to conclude whether the attorney violated the rule and the Tennessee Board of Professional Responsibility failed to raise the issue before the panel. Without a conclusion as to the rule allegation, reviewing courts were without authority to amend, modify, or reverse the panel's decision and had to treat the panel's silence as a dismissal of the allegations. *Bd. of Prof'l Responsibility v. MacDonald*, 595 S.W.3d 170, 2020 Tenn. LEXIS 66 (Tenn. Feb. 14, 2020).

5. Aggravating Factors.

Nothing compelled the hearing panel to apply the aggravating factors of pattern of misconduct and multiple offenses because the multiple instances of misappropriations by writing checks would underlie both the pattern of misconduct factor and multiple offenses factor if both were applied, resulting in double consideration of essentially the same circumstances; the fact that the hearing panel chose to include pattern of misconduct but not multiple offenses was not arbitrary and capricious. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

Mounting of a defense, without more, should not be applied as an aggravating factor; because the Board of Professional Responsibility only argued that an attorney took the position that he was owed the money that he misappropriated as a basis for the aggravating factor of refusal to acknowledge the wrongful nature of his conduct, which was the attorney's defense, the hearing panel did not err by refusing to apply that aggravating factor. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

Hearing panel erred by failing to consider the vulnerability of the victims as an aggravating factor because the attorney, apart from being a partner in his firm, also solely managed the partnership's finances and account books. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

6. Mitigating Factors.

Hearing panel did not give inappropriate weight to the mitigating factor of an attorney's good character because it stated that the attorney's character witnesses admitted that they had little or no knowledge of the facts of the case and the allegations set forth against the attorney. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

Hearing panel did not give inappropriate weight to the mitigating factor of an attorney's

good character because it stated that the attorney's character witnesses admitted that they had little or no knowledge of the facts of the case and the allegations set forth against the attorney. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

In light of the broad discretion to consider any fact in mitigation, and the supreme court's own deferential standard of review, the hearing panel did not abuse its discretion by considering that no client was deprived of any money as a mitigating factor. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Daniel*, 549 S.W.3d 90, 2018 Tenn. LEXIS 269 (Tenn. June 8, 2018).

Lawyers are professionally obligated to comply with the Rules of Professional Conduct, and compliance is the norm and expectation; it does not mitigate a lawyer's previous failure to fulfill his or her professional obligation. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

7. Dismissal.

Because no prejudice had been shown by an alias summons incorrectly listing a personal exemption, dismissal of the petition filed by the the Board of Professional Responsibility was not appropriate. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

8. Findings Supported by Substantial And Material Evidence.

Ample substantial and material evidence supported the Board of Professional Responsibility Hearing Panel's findings that a lawyer had violated the Rules of Professional Conduct because the lawyer claimed a paralegal's work as his own; an itemization of fees and costs included entries purporting to describe the lawyer's work on a case that were either identical or nearly identical to entries on the paralegal's invoices that described his work on the case. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information to an administrative law judge because the attorney was not honest with the judge about the status of a federal case; the attorney's false statement that there were no new developments to report and his failure to disclose the material develop-

ments delayed the resolution of the proceeding. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Board of Professional Responsibility hearing panel's conclusion that an attorney sought to improperly influence an administrative law judge by threatening her was supported by substantial and material evidence because the attorney stated that the judge would become a defendant in a federal lawsuit and subject to a Department of Justice investigation if she set an administrative appeal for hearing; the statements could reasonably be viewed as threats made to secure a certain course of action. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supports the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information to an administrative law judge because his representation that he intended to ask a federal court to stay an administrative appeal ran contrary to the federal court's previous ruling on the issue; ultimately, the attorney did not produce a federal court filing that requested a stay of the administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supports the Board of Professional Responsibility hearing panel's conclusion that an attorney's unfounded and disparaging characterizations expressed contempt for an administrative law judge and the tribunal because he cast the judge as a possible "fixer" that would be "aiding and abetting" opposing parties; the attorney's conduct breached his obligation to demonstrate respect for the law and legal institutions. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's conclusion that an attorney failed to disclose material information about a federal case because the attorney never disclosed that the case had been dismissed; the federal court's

dismissal of the case was relevant and material information that the attorney should have disclosed to an administrative law judge in the multiple conference calls about an administrative appeal. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Substantial and material evidence supported the Board of Professional Responsibility hearing panel's decision that an attorney failed to disclose material information because the attorney failed to disclose to an administrative law judge material facts from federal litigation known to him; in doing so, the attorney violated his duty of candor to the tribunal and engaged in dishonest conduct. *Dunlap v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 595 S.W.3d 593, 2020 Tenn. LEXIS 65 (Tenn. Feb. 7, 2020).

Hearing panel's conclusion that an attorney was not to be disciplined for adding a conformed signature of an opposing party by typewriter to a letter and later submitting the letter as an exhibit to a client's affidavit was not arbitrary because the panel had a reasonable basis to conclude that the attorney added the conformed signature with a good faith belief based upon the client's representations that there was a signed original and that the attorney's addition did not constitute falsifying evidence. *Bd. of Prof'l Responsibility v. MacDonald*, 595 S.W.3d 170, 2020 Tenn. LEXIS 66 (Tenn. Feb. 14, 2020).

9. Disbarment.

Trial court's modification of a sanction to disbarment was appropriate because the hearing panel did not analyze the presumptive sanction under the ABA Standards, there was an imbalance of aggravating and mitigating factors, and the lawyers' misconduct evidenced his utter disregard for the fundamental obligation to be truthful and honest officers of the court; the lawyer gave a false statement under oath, knowingly testified falsely in the district court, and sought an unreasonable fee. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

33.2. The Chief Justice shall designate a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the respondent or petitioning attorney was located at the time the charges were filed with the Board. Alternatively, the Chief Justice may designate a Senior Judge who shall not be subject to this geographic limitation. It shall be this judge's, chancellor's, or Senior Judge's duty to review the case in the manner set forth in Section 33.1 and to enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective

as if the special judge were the regular presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases.

33.3.

(a) The judgment of the hearing panel may be stayed in the discretion of the hearing panel, pending any appeal pursuant to Section 33. Upon the filing of a Petition for Review pursuant to Section 33, and in the event the judgment is not stayed by the hearing panel, the trial court in its discretion may stay the hearing panel's judgment upon motion of a party.

(b) The final judgment of the trial court may be stayed in the discretion of the trial court, pending an appeal to the Court pursuant to Section 33. In the event the trial court does not issue a stay pending appeal, the Court may issue a stay upon the motion of a party.

Section 34. Additional Rules of Procedure**34.1.**

(a) The Board Chair may authorize the preparation of all or any portion of the transcript of a hearing upon a written request from the hearing panel stating the need therefore. If request is made by the hearing panel for only a portion of the transcript, either Disciplinary Counsel or the respondent or petitioning attorney may request in writing from the Chair authorization for transcription of any other portion of the hearing for completeness. Each party shall pay for that portion of the transcript which the respective party requests.

(b) It is the responsibility of the party seeking review of the hearing panel's decision to procure and file the transcript of the hearing. However, if there is no appeal from the judgment of the hearing panel, the hearing shall not be transcribed unless requested by one of the parties, which party shall pay the expense of transcription. The court reporter shall preserve the record of the proceedings until the time for appeal has expired.

34.2. Except as is otherwise provided in this Rule, time is directory and not jurisdictional. Time limitations are administrative, not jurisdictional. Failure to observe such directory time intervals may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

34.3.

(a) Except as otherwise provided in this Rule, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply in disciplinary case proceedings before a hearing panel, the Board, or a panel.

(b) Regardless of the forum in which the proceeding is pending, Disciplinary Counsel's work product shall not be required to be produced, nor shall a member of the hearing panel or the Board, the Chief Disciplinary Counsel, or the staff be subject to deposition, including Tenn. R. Civ. P. 30.02(6) depositions, or compelled to give testimony, unless ordered by the trial court upon a showing by the requesting party of substantial need and an inability to obtain

substantially equivalent materials by other means without undue hardship during an appeal pursuant to Section 33.

NOTES TO DECISIONS

1. Application.

Tennessee Rules of Civil Procedure apply in attorney discipline cases. *Skouteris v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 430 S.W.3d 359, 2014 Tenn. LEXIS 120 (Tenn. Feb. 21, 2014).

Though the Tennessee Rules of Civil Procedure generally apply in attorney disciplinary proceedings, it is only where the Tennessee Supreme Court Rules do not provide otherwise,

and thus the disciplinary rule governs the content requirements for petitions in attorney disciplinary proceedings, not the civil procedure rule; because the petition for discipline filed in this case complied with the requirements of the disciplinary rule, the petition was not procedurally deficient. *Mabry v. Bd. of Prof'l Responsibility*, 458 S.W.3d 900, 2014 Tenn. LEXIS 1046 (Tenn. Dec. 30, 2014).

Section 35. Detection and Prevention of Trust Account Violations

35.1. Maintenance of Trust Funds in Approved Financial Institutions; Overdraft Notification.

(a) Clearly Identified Trust Accounts in Approved Financial Institutions Required. (1) Attorneys who practice law in Tennessee shall deposit all funds held in trust in this jurisdiction in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts,” and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Board, provided however nothing herein shall be construed as limiting any statutory provisions dealing with the investment of trust and/or estate assets, or the investment authority granted in any instrument creating a fiduciary relationship.

(2) Every attorney engaged in the practice of law in Tennessee shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client. The five year period for preserving records created herein is only intended for the application of this rule and does not alter, change or amend any other requirements for record-keeping as may be required by other laws, statutes or regulations.

(b) Overdraft Notification Agreement and Acknowledgment of Authorization Required. A financial institution shall be approved as a depository for attorney trust accounts if it files with the Board an acknowledgment of the attorney’s constructive consent of disclosure of their trust account financial records as a condition of their admission to practice law, and the financial institution’s agreement, in a form provided by the Board to report to the Board whenever any properly payable instrument is presented against an attorney trust

account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not acknowledge constructive authorization by the attorney and agree to so report. Any such acknowledgment and agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the Board.

(c) Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(d) Timing of Reports. Reports under Subpart (c) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(e) Consent by Attorneys. Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed, under the financial records privacy laws, other similar laws, or otherwise, to have designated the Board as their agent for the purpose of disclosure of financial records by financial institutions relating to their trust accounts; conclusively deemed to have authorized disclosure of financial records relating to their trust accounts to the Board; and, conclusively deemed to have consented to the reporting and production of financial records requirements contemplated or mandated by Sections 35.1 or 35.2 of this Rule.

(f) No Liability Created. Nothing herein shall create or operate as a liability of any kind or nature against any financial institution for any of its actions or omissions in reporting overdrafts or insufficient funds to the Board.

(g) Costs. Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

(h) Definitions. For the purpose of this Rule:

(1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an

instrument that the institution dishonors.

NOTES TO DECISIONS

1. **Requirements Not Satisfied.**

Debtors’ attorney violated a number of the Tennessee Rules of Professional Conduct by failing to keep debtor wife reasonably informed about the status of life insurance proceeds that she became entitled to during the pendency of the case; never executing a fee agreement with debtors; failing to hold the insurance proceeds in trust; and taking no responsibility for the errors that occurred but instead, placing the

blame on employees and on debtor. His violations were tantamount to bad faith, as he recklessly failed to comply with the trust requirements and, given the fact that his ethical violations were numerous, coupled with the fact that he did not accept responsibility, a suspension from practice before the court was appropriate. *In re Mills*, — B.R. —, 2018 Bankr. LEXIS 2199 (Bankr. W.D. Tenn. July 24, 2018).

35.2. Verification of Financial Institution Accounts.

(a) Generally. Whenever Disciplinary Counsel has probable cause to believe that financial institution accounts of an attorney that contain, should contain or have contained funds belonging to clients have not been properly maintained or that the funds have not been properly handled, Disciplinary Counsel shall request the approval of the Chair or Vice-Chair of the Board to initiate an investigation for the purpose of verifying the accuracy and integrity of all financial institution accounts maintained by the attorney. If the Chair or Vice-Chair approves, Disciplinary Counsel shall proceed to verify the accuracy of the financial institution accounts.

(b) Confidentiality. Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the attorney’s records insofar as is consistent with these rules and the attorney-client privilege; however, no assertion of attorney-client privilege or confidentiality will prevent an inspection or audit of a trust account as provided in this Rule. (Amended by order filed October 4, 2016, effective upon filing.)

Compiler’s Notes. In its order filed October 4, 2016, the Supreme Court provided: “On July 13, 2016, the Board of Professional Responsibility of the Supreme Court of Tennessee (“BPR”) and the Tennessee Bar Foundation filed a petition asking the Court to amend Rule 8, RPC 1.15 and Rule 43 of the Rules of the Tennessee Supreme Court to allow attorneys to deposit trust funds in federally insured credit unions.

“On August 18, 2016, the Court filed an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was Monday, September 19,

2016. The Court received only one written comment during the comment period, a comment from the Tennessee Credit Union League supporting the proposed amendments and suggesting that the Court also amend Rule 9, section 35.2(a) of the Rules of the Tennessee Supreme Court to create consistency among the rules.

“After due consideration, the Court hereby adopts the amendments to Rule 8, RPC 1.15, Rule 9, section 35.2(a), and Rule 43 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

Section 36. Tennessee Lawyer Assistance Program

The Tennessee Lawyer Assistance Program (TLAP) was established by the Court to provide immediate and continuing help to attorneys, judges, bar applicants, and law students who suffer from physical or mental disabilities that result from disease, disorder, trauma, or age and that impair their ability to practice or serve.

36.1. Referrals to TLAP.

(a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court, the Board, or its hearing panels or Disciplinary Counsel, may provide a written referral to TLAP of any attorney who the Board, or a hearing panel or Disciplinary Counsel determines:

- (1) has failed to respond to a disciplinary complaint;
- (2) has received three or more complaints within a period of twelve months;
- (3) has received a complaint that includes multiple failures to appear or to respond or to take any other action in compliance with established rules or time guidelines;
- (4) has pleaded impairment or disability as a defense to a complaint;
- (5) has exhibited behavior or has engaged in behavior that, in the BPR's determination, warrants consultation and, if recommended by TLAP, further assessment, evaluation, treatment, assistance, or monitoring;
- (6) is seeking readmission or reinstatement where there is a question of either prior or present impairment or disability; or
- (7) is requesting TLAP's involvement.

(b) The Executive Director of TLAP shall review any referral made pursuant to subsection (a). If the Executive Director of TLAP deems that assistance and monitoring of an attorney is appropriate, the Executive Director will make reasonable efforts to enter into a Monitoring Agreement ("Agreement") with the attorney pursuant to Rule 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive Director of TLAP determines that TLAP assistance is not appropriate, for whatever reason, the Executive Director shall report that determination in writing to the referring party under subsection (a), without further elaboration and without disclosure of information otherwise confidential under Rule 33.10.

(c) The Board will provide written notification to the Executive Director of TLAP that TLAP's assistance will be or has been recommended in any matter pending before the Board or when the Board, or a hearing panel or Disciplinary Counsel, knows that TLAP has an ongoing relationship with an attorney who has a matter pending before the Board. The Board will provide such notification prior to the date of any hearing and will further provide notice of any hearing date. The Executive Director of TLAP or his or her representative may attend any such hearing.

(d) The Board will provide written notification to the Executive Director of TLAP of any provision concerning the participation of TLAP included in any proposed order submitted by the Board, or by a hearing panel or Disciplinary Counsel, to the Court or any other agreement between the respondent or petitioning attorney and the Board or Disciplinary Counsel, informal or otherwise, in which TLAP is required. The Executive Director of TLAP will notify the Board of any requested modification of the order and may decline involvement. Both the Board and TLAP will timely provide this information to the other to prevent unnecessary delay of the disciplinary process. If the Executive Director of TLAP declines involvement of TLAP, neither the Board, nor a hearing panel nor Disciplinary Counsel, shall include TLAP's participation in any proposed order submitted to the Court. Neither the Board, nor a hearing panel nor Disciplinary Counsel, shall include TLAP in any proposed

order submitted to the Court unless TLAP has given notice to the Board or the respondent or petitioning attorney or his or her counsel that TLAP will accept involvement in the matter. In any proposed order submitted by the Board, or by a hearing panel or Disciplinary Counsel, to the Court that includes TLAP involvement, the proposed order shall specifically state that TLAP has been consulted and that TLAP has accepted involvement in the matter, and the proposed order shall contain a certificate of service stating the date and manner in which the proposed order was served upon the Executive Director of TLAP.

(e) Pursuant to Rule 33.07(B) of the Rules of the Tennessee Supreme Court, TLAP will provide the Board with the following information:

(1) TLAP will notify Disciplinary Counsel of a referred attorney's failure to establish contact with TLAP or enter into a recommended Agreement.

(2) If the attorney enters into an Agreement with TLAP which requires mandatory reporting to Disciplinary Counsel, TLAP will provide a copy of the Agreement to Disciplinary Counsel. Such Agreement will provide for notification by TLAP to Disciplinary Counsel of substantial non-compliance with any of the terms or conditions of the Agreement. Contemporaneously with any such notification, the Executive Director of TLAP may make such recommendation to Disciplinary Counsel as TLAP deems appropriate.

(3) Upon request of Disciplinary Counsel, TLAP will provide Disciplinary Counsel with a status report of monitoring and compliance pursuant to the Agreement. When appropriate, Disciplinary Counsel will obtain from TLAP's Executive Director a recommendation concerning the attorney's compliance with any Agreement.

36.2. Autonomy. The Board and TLAP shall remain completely independent, and the activities of one shall in no way be construed to limit or impede the activities of the other.

Section 37. Suspension of Law License for Default on Student Loan or Service-Conditional Scholarship Program

37.1. Consistent with Chapter 519, Section 6, of the Public Acts of 2012 and with Tenn. Comp. R. & Regs. 1640-01-23 (2013), this Section 37 governs the suspension of an attorney's license to practice law when the attorney has been determined to be in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by the Tennessee Student Assistance Corporation ("TSAC"), or any other state or federal educational loan or service-conditional scholarship program.

37.2. Notice of Default; Show Cause Order. Any Notice of Default issued by TSAC pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.05(4) and pertaining to an attorney licensed to practice law in Tennessee shall be transmitted to the Supreme Court by sending the Notice to the Nashville office of the Clerk of the Supreme Court. Upon the Court's receipt of a Notice of Default advising the Court that TSAC has determined that an attorney is in

default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program, the Court will promptly issue a show cause order directing the attorney to show cause within thirty days why the attorney's law license should not be suspended by the Court based on the attorney's default.

37.3. Service of Show Cause Order. A show cause order issued pursuant to Section 37.2 shall be sent to the attorney by a form of United States mail providing delivery confirmation, at the primary or preferred address shown in the attorney's most recent registration statement filed pursuant to Section 10.1 or at the attorney's last known address, and at the email address shown in the attorney's most recent registration statement filed pursuant to Section 10.1 or at the attorney's last known email address. A copy of the order also shall be sent to the Chief Disciplinary Counsel of the Board and to the Executive Director of TSAC.

37.4. Response to Show Cause Order; Disposition. The attorney shall serve a copy of his or her response to the show cause order, if any, on the Chief Disciplinary Counsel of the Board and on the Executive Director of TSAC. If the attorney's response demonstrates to the satisfaction of the Court that the attorney has remedied the default upon which the Notice of Default was based, the Court may file an order continuing the show-cause proceeding and allowing the attorney a reasonable period within which to seek a Notice of Compliance from TSAC. If the attorney's response fails to demonstrate to the satisfaction of the Court that the attorney has remedied the default, or if the attorney fails to timely file a response to the show cause order, the Court will file an order suspending the attorney's license to practice law. Any order filed pursuant to this Section 37.4 shall be served on the attorney, the Chief Disciplinary Counsel of the Board, and the Executive Director of TSAC.

37.5. Term of Suspension; Notice of Compliance. Upon the Court's issuance of a Suspension Order pursuant to Section 37.4, the attorney's law license shall remain suspended until reinstated by the Court. Upon TSAC's issuance of a Notice of Compliance pursuant to Tenn. Comp. R. & Regs. R. 1640-01-23-.06, and if the attorney otherwise is eligible for reinstatement, the attorney may seek reinstatement pursuant to Section 37.7.

37.6. Suspended Attorney Required to Notify Clients, Adverse Parties, and Other Counsel. An attorney whose license is suspended pursuant to this Section 37 shall comply with the applicable provisions of Section 28.

37.7. Reinstatement. Reinstatement following a suspension pursuant to Section 37.4 shall require payment to the Board of a Two Hundred Dollar (\$200.00) reinstatement fee and an order of the Court but shall not require a reinstatement proceeding pursuant to Section 30.4, unless ordered by the Court.

(a) An attorney suspended by the Court pursuant to Section 37.4 who wishes to be reinstated and who has remained suspended for one year or less

before the filing of a petition for reinstatement shall file with the Board a petition for reinstatement of the attorney's license to practice law; the attorney must submit with the petition a Notice of Compliance issued by TSAC, stating that the attorney has remedied the default upon which the Notice of Default and subsequent Suspension Order were based and must pay to the Board the Two Hundred Dollar (\$200.00) reinstatement fee. If the petition is satisfactory to the Chief Disciplinary Counsel and if the attorney otherwise is eligible for reinstatement, the Chief Disciplinary Counsel shall promptly submit to the Court a proposed Reinstatement Order. If the petition for reinstatement is denied by the Chief Disciplinary Counsel, the attorney seeking reinstatement may appeal to the Board within fifteen days of notice of the denial. The Board, or a committee of no fewer than three of its members, shall review the documentation provided by the attorney and approve or reverse the determination of the Chief Disciplinary Counsel. There shall be no petition for rehearing.

(b) An attorney suspended by the Court pursuant to Section 37.4 who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law; the attorney must submit with the petition a Notice of Compliance issued by TSAC, stating that the attorney has remedied the default upon which the Notice of Default and subsequent Suspension Order were based and confirmation that the attorney has paid to the Board the Two Hundred Dollar (\$200.00) reinstatement fee. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement.

37.8. Fees. Upon the filing of a Suspension Order pursuant to Section 37.4, the costs of the show-cause proceeding shall be taxed to the suspended attorney.

APPENDIX A Annual Registration Statement



BOARD OF PROFESSIONAL RESPONSIBILITY of the SUPREME COURT OF TENNESSEE
10 Cadillac Drive, Suite 220, Brentwood, TN 37027, (615) 361-7500

2015 ANNUAL REGISTRATION STATEMENT

This Annual Statement has been issued pursuant to Supreme Court Rules 9, 25 and 43.

To complete your Annual Registration online, go to www.tbpr.org to log into the Attorney Portal; complete the online forms and pay the annual fee using a MasterCard or Visa. If not registering online, please complete ALL pages of this statement and return it with your payment to the address above.

BPR cards are issued every two weeks. Your BPR card will be mailed to you after receipt of your 2015 completed Annual Registration Statement and payment (either hard copy or online version).

Name: _____ BPR No.: _____

Annual Fee: \$170.00

Due Date: _____

Access to Justice Donation: ☐ \$50.00 ☐ \$75.00 ☐ \$100.00 ☐ \$25.00 ☐ \$0

Total amount enclosed: _____ (Make checks payable to: "Board of Professional Responsibility")

Please update your contact information pursuant to Tenn. Sup. Ct. R. 9, Sec. 10.1:
(Office address information will be displayed on the Board's website.)

New Office address: _____

Telephone: _ (____) _____ Fax #: _ (____) _____

Business email address: _____

New Home address: _____

Telephone: _ (____) _____ Mobile #: _ (____) _____

Home email address: _____

Preferred Mailing Address: ☐ Office ☐ Home

I certify that the information provided in this Registration Statement is accurate and complete.

(Signature)

(Date)

{Attorney Name}
{Organization Name}
{Address}
{City, State, Zip}

To avoid penalties and possible suspension, ALL lawyers with a Tennessee license MUST complete and submit this information either using this paper form OR on the Attorney Portal.

2015 ANNUAL REGISTRATION

NAME: _____

BPR No.: _____

FIRM/ORGANIZATION NAME: _____

MANDATORY STATEMENT
IOLTA Compliance Reporting
(TENN. SUP. CT. RULE 43, SECTION 14; and RPC 1.15)

- ☐
1. I/my firm hold(s) in an IOLTA account(s) pooled client or third party funds nominal in amount or expected to be held a short period of time, that cannot be made productive for the client or third party. (If your office is not in Tennessee, do not report out-of-state accounts; see 2D.)

List all IOLTA Accounts: (Enclose a separate sheet for more accounts.)

Financial Institution	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. If you are claiming an exemption, check ONE box only (mark the box that best fits).

- ☐
- A. I/my firm hold(s) no funds that are required to be deposited in an IOLTA account.
- ☐
- B. I am not engaged in the private practice of law in any jurisdiction.
- ☐
- C. Occupation: I am not engaged in the private practice of law. I serve in the following capacity:

☐ Judge ☐ Attorney General ☐ Public Defender

☐ U.S. Attorney ☐ District Attorney ☐ In-house counsel ☐ Teacher of Law

☐ On full-time active duty in the armed forces

☐ Employed by state, local, or federal government in a capacity not listed above
- ☐
- D. I do not have an office in Tennessee (Note: For the purposes of this Rule, a lawyer who practices as a principal, employee, of counsel, or in any other capacity with a firm that has an office in TN, shall be deemed to have an office in TN if the lawyer utilizes one or more offices of the firm located in TN more than the lawyer utilizes one or more offices of the firm located in any other single state.)
- ☐
- E. Non-Earning Account(s) - Bank records must demonstrate that the account(s) did not accrue interest or dividends in excess of reasonable bank fees. (Enclose an explanation on a separate sheet.)
- ☐
- F. Location Proximity - I am exempt because no eligible financial institution is located within reasonable proximity of my office. (Enclose an explanation on a separate sheet.)

For additional information regarding mandatory IOLTA compliance, see www.tnbarfoundation.org

2015 ANNUAL REGISTRATION

NAME:

BPR No.:

Pro Bono Reporting (Tenn. Sup. Ct. Rule 9, Section 10.10):

Pro bono service is not required, but many attorneys freely give their time and talents to improve our profession, our system of justice, and our communities. Please report the extent of your pro bono activities in the preceding calendar year. For further description of the categories described below, *see* Tenn. Sup. Ct. R. 8, RPC 6.1.

- (1) I estimate that I worked the following hours in 2014:

_____ Hours Providing Legal Services to Persons of Limited Means Without a Fee or at a Substantially Reduced Fee;

_____ Hours Providing Legal Services to Non-Profit Organizations Serving Persons of Limited Means Without a Fee;

_____ Hours Providing Legal Services to Groups and Organizations at a Reduced Fee when Payment of Standard Fees would create a Financial Hardship; and

_____ Hours Providing Legal Services to Improve the Law, the Legal System, or the Legal Profession.

- (2) I voluntarily contributed financial support to organizations that provide legal services to persons of limited means:

_____ Yes; (Please do not disclose the amount.)

_____ No.

- (3) Pursuant to Tenn. Sup. Ct. R.9, Section 10.10, this reported information remains confidential unless you waive it solely for purposes of public pro bono recognition by the Supreme Court.

☐ *I would like to have my reported pro bono hours submitted to the Supreme Court solely for the purpose of pro bono award recognition.*

Optional Access To Justice Donation:*

There exists a growing legal needs gap in Tennessee. Indigent and working-poor families face more legal problems caused by unemployment, predatory loans, uninsured medical bills, domestic violence, evictions and foreclosures. In response to this growing need, the Tennessee Supreme Court has declared access to justice for all Tennesseans its number one strategic priority. As a part of the Court's Access To Justice Initiative, all Tennessee attorneys are asked to give a voluntary contribution which will be used to fund direct legal service providers across the state. This donation will help to provide access to justice for the over 1 million low-income Tennesseans who have civil legal problems.

A suggested voluntary donation of \$50.00 is requested. If you wish to give a larger donation, mark the \$75 and/or \$100 donated amounts on Page One of this statement. If you wish to give a smaller donation, mark the \$25 amount. If you prefer not to donate, please indicate accordingly.

*This donation may be tax-deductible. Consult a tax expert.

Compiler's Notes. By order dated March 31, 2015, the Supreme Court provided that "On December 2, 2014, the Court published for public comment the petition of the Access to Justice Commission ("the Commission") asking the Court to amend Tennessee Supreme Court Rule 9, sections 10.2 and 10.10. In particular, the Commission proposed amending Rule 9, section 10.10 to require Tennessee attorneys to report annually the extent of their pro bono work, if any, and to impose an administrative sanction on any lawyer who failed to report pro bono hours. The Commission also proposed amending Rule 9, section 10.2 to implement a new funding mechanism for access-to-justice programs. Specifically, the Commission proposed including on the annual registration form licensed Tennessee lawyers must complete for the Board of Professional Responsibility an "opt out" line item for lawyers to select if they chose not to make a contribution (with \$50 as the suggested contribution) to support access-to-justice programs. The deadline for written comments on the Commission's proposed amendments was set for February 2, 2015, and has now expired. Many thoughtful comments regarding the proposed amendments were submitted, and the Commission was permitted to submit a response to these comments.

"Upon due consideration of the petition, the comments, and the response, the Court denies

in part and grants in part the Commission's petition. In particular, the Court declines to require Tennessee attorneys to report annually the extent of their pro bono work. As a result, the Court also declines to impose a sanction for failure to report. Nevertheless, the Court continues to encourage strongly voluntary reporting of pro bono participation. Such reporting provides important information, which is used for many purposes, including raising public awareness about the selfless and ongoing efforts of Tennessee attorneys to improve access to justice in this State.

"The Court grants the Commission's request to establish a new voluntary funding mechanism for access-to-justice programs. The Court declines, however, to require Tennessee attorneys to "opt out" of participating in this program. Instead, the annual registration form will be revised to include a section that allows Tennessee attorneys to "opt in" by making a voluntary financial contribution to access-to-justice programs.

"The Court hereby adopts the amendments to Tennessee Supreme Court Rule 9, sections 10.2 and 10.10, as set out in the attached Appendix A. These amendments shall take effect on July 1, 2015. The annual registration form has been revised as a result of these amendments, and the revised form is attached as Appendix B."

APPENDIX B RECONCILIATION CHARTS

CHART A: RECONCILIATION OF RULE 9 (NEW TO FORMER)

NEW SECTION #	TOPIC	FORMER SECTION #
1	Preamble	3.1
2	Definitions	New
3	Disciplinary Districts	2
4	Board	5
5	Ethics Opinions	26
6	District Committees	6
7	Disciplinary Counsel	7
8	Jurisdiction	1
9	Multijurisdictional Practice	33
10	Periodic Assessment of Attorneys	20
11	Grounds for Discipline	3
12	Types of Discipline	4
13	Diversion of Disciplinary Cases	30
14	Probation	8.5
15	Procedure: Investigation and Hearing	8
16	Complaints Against Board, District Committee, or Disciplinary Counsel	9
17	Immunity	27
18	Service	12
19	Subpoenas	13
20	Refusal of Complainant to Proceed	10
21	Matters Involving Related Litigation	11
22	Attorneys Convicted of Crimes/Summary Suspension	14
Deleted	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	31
23	Disbarment by Consent	15
24	Discipline by Consent	16
25	Reciprocal Discipline	17
26	Failure to Comply with Privilege Tax	32
27	Disability	21
28	Notice to Clients, Adverse Parties, Counsel	18
29	Appointment of Counsel to Represent Clients' Interests	22
30	Reinstatement	19
31	Expenses/Reimbursement of Costs	24
32	Confidentiality	25
33	Review/Appeal	1.6 — 1.3
34	Other Procedures	23
35	Trust Funds	29
36	TLAP	28
37	Default on Student Loan	New

CHART B: RECONCILIATION OF RULE 9 (FORMER TO NEW)

FORMER SECTION #	TOPIC	NEW SECTION #
1	Jurisdiction	8
1.3 — 1.6	Review/Appeal	33
2	Disciplinary Districts	3
3	Grounds for Discipline	11
3.1	Preamble	1
4	Types of Discipline	12
5	Board	4
6	District Committees	6
7	Disciplinary Counsel	7
8	Procedure: Investigation and Hearing	15
8.5	Probation	14
9	Complaints Against Board, District Committee, or Disciplinary Counsel	16
10	Refusal of Complainant to Proceed	20
11	Matters Involving Related Litigation	21
12	Service	18
13	Subpoenas	19
14	Attorneys Convicted of Crimes/Summary Suspension	22
15	Disbarment by Consent	23
16	Discipline by Consent	24
17	Reciprocal Discipline	25
18	Notice to Clients, Adverse Parties, Counsel	28
19	Reinstatement	30
20	Periodic Assessment of Attorneys	10
21	Disability	27
22	Appointment of Counsel to Represent Clients’ Interest	29
23	Other Procedures	34
24	Expenses/Reimbursement of Costs	31
25	Confidentiality	32
26	Ethics Opinions	5
27	Immunity	17
28	TLAP	36
29	Trust Funds	35
30	Diversion of Disciplinary Cases	13
31	Attorneys Adjudged to Have Refused to Comply with Orders/Summary Suspension	Deleted
32	Failure to Comply with Privilege Tax	26
33	Multijurisdictional Practice	9
New	Definitions	2
New	Default on Student Loan	37

Rule 10. Code of Judicial Conduct.**PREAMBLE**

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. The Comments should be read in conjunction with the Rules and as aids to the interpretation and application of the Rules. When a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges

should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

[8] Standard Citation Format. Citations to a Rule of Judicial Conduct (“RJC”) in this Code shall be in the following format: Tenn. Sup. Ct. R. 10, RJC

TERMINOLOGY

“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. *See* RJC’s 2.11 and 4.4.

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. *See* RJC’s 2.14 and 2.15.

“Contribution” means both financial and in-kind contributions, such as goods, professional services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. “Contribution” includes but is not limited to a contribution as defined by Tennessee Code Annotated section 2-10-102(4). *See* RJC’s 2.11, 2.13, 3.7, 4.1, and 4.4.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. *See* RJC 2.11.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. *See* RJC’s 2.11, 2.13, 3.13, and 3.14.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not

include:

an interest in the individual holdings within a mutual or common investment fund;

an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

an interest in the issuer of government securities held by the judge.

See RJC's 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. *See* RJC's 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Canons 1, 2, and 4, and RJC's 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. *See* RJC's 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. *See* Canon 1 and RJC 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. *See* Canons 1 and 4 and RJC's 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. *See* Canon 1 and RJC 1.2.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. "Judicial candidate" includes but is not limited to a "candidate" as defined by Tennessee Code Annotated section 2-10-102(3). *See* RJC's 2.11, 4.1, 4.2, and 4.4.

"Judicial Settlement Conference" means a mediation conducted by a judicial officer as defined in Tenn. Sup. Ct. Rule 31.

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. *See* RJC's 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, rules and regulations, and decisional law. *See* RJC's 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* RJC’s 3.7, 3.8, 3.10, and 3.11.

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood, adoption or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. *See* RJC’s 2.11 and 3.13.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, dependency and neglect cases, or psychiatric reports. *See* RJC 3.5.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. *See* RJC’s 2.9, 2.10, 3.13, and 4.1.

“Personally solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made in person or by letter, telephone, or any other means of communication, including electronic communication. *See* RJC 4.1.

“Political organization” means a political party or other group, sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. “Political organization” includes but is not limited to an affiliated political campaign committee as defined by Tennessee Code Annotated section 2-10-102(1), a multi-candidate political campaign committee as defined in Tennessee Code Annotated section 2-10-102(9) and a political campaign committee as defined in Tennessee Code Annotated section 2-10-102(12). For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by RJC 4.4. *See* RJC’s 4.1 and 4.2.

“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. *See* RJC’s 4.2 and 4.4.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* RJC 2.11.

Law Reviews. *Clashes With Judges Can’t Always Be Attributed to “Robitis”* (Hon. R. Vann Owens), 28 No. 5 Tenn. B.J. 39 (1992).

Ethical Obligations of Judges (Joe G. Riley), 23 Mem. St. U.L. Rev. 507 (1993).

Ethics — Collier v. Griffith — Determining Whether Tennessee State Court Judges Should Recuse Themselves from Cases Which Involve Attorneys in Leadership Positions in Their Campaigns for Re-election, 23 Mem. St. U.L. Rev. 741 (1993).

Loose Canons. A National Survey of Attorney-Client Sexual Involvement: Are There Ethical Concerns? (Dan S. Murrell, J.L. Bernard, Lisa K. Coleman, Leborah L. O’Laughlin, Robert B. Gaia), 23 Mem. St. U.L. Rev. 483 (1993).

The Tennessee Court System — Circuit Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 241.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts III through V of this section identify provisions that apply to the three categories of part-time judges only while they are serving as judges, and provisions that do not apply to part-time judges at any time. Rules that do not appear in Sections III through V are therefore applicable to part-time judges at all times. The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including but not limited to an officer such as a magistrate, referee, court commissioner, judicial commissioner, special master, or an administrative judge or hearing officer.

Comment.

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] Some states, including Tennessee, have created courts in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. Judges serving on such courts shall comply with this Code except to the extent laws or court rules provide and permit otherwise. See RJC 2.9 Comment [4].

[4] The Secretary of State, in accordance with Tennessee Code Annotated section 4-5-321(b), adopted a code of conduct for all administrative

judges and hearing officers:

Tenn. Rules and Regs. Ch. 1360-4-1-.20. Code of Judicial Conduct.

Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all administrative judges and hearing officers of the State of Tennessee. However, any complaints regarding any individual administrative judge's or hearing officer's conduct under the code shall be made to the chief administrative judge or hearing officer or other comparable entity with supervisory authority over the administrative judge or hearing officer, and any complaints about the chief administrative judge or hearing officer shall be made to the appointing authority.

The provisions of Tennessee law dealing with the Board of Judicial Conduct are not applicable to administrative judges and hearing officers of the State of Tennessee. See Tenn. Code Ann. Title 17, Chapter 5.

[5] This provision does not apply to special commissioners performing nonjudicial functions.

II. SENIOR JUDGE

A judge designated as a senior judge or justice pursuant to Tenn. Code Ann. § 17-2-303, who by law is not permitted to practice law, is required to comply with the provision of this Code to the same extent as a full time judge.

Comment.

[1] For the purposes of this section, a senior judge is considered to "perform judicial functions." Tennessee Code Annotated section 17-2-

302 specifically prohibits senior judges from practicing law and further requires their compliance with this Code.

III. CONTINUING PART-TIME JUDGE

A judge who serves repeatedly on a part-time basis by election or under a

continuing appointment is a “continuing part-time judge.” These include, but are not limited to, part-time judges, magistrates, referees, and judicial commissioners in the general sessions, juvenile, municipal and other courts. A continuing part-time judge:

(A) is not required to comply at any time with RJC’s 3.4 (Appointments to Governmental Positions), 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11(B) (Financial, Business, or Remunerative Activities), and 3.15 (Reporting Requirements), and

(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Comment.

[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and only to the extent authorized by the Rules of Professional Conduct.

[2] Although a continuing part-time judge is precluded from practicing law in any court

subject to the appellate jurisdiction of the court on which the judge serves, this rule does not prevent the judge from practicing in a court to which an appeal lies from the judge’s court. For example, a part-time general sessions court judge may practice in circuit court so long as the proceeding is not one in which the judge served as a judge or a proceeding related thereto.

IV. [INTENTIONALLY OMITTED]

V. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:

(A) except while serving as a judge, with RJC’s 2.4 (External Influences on Judicial Conduct), 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); and 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7); or

(B) at any time with RJC’s 3.4 (Appointments to Governmental Positions), 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11(B) (Financial, Business, or Remunerative Activities), and 3.15 (Reporting Requirements).

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom RJC’s 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge. To the extent such activities are related to the judge’s law practice, the 180 day requirement related to the winding up of a law practice applies. *See* RJC 3.10 and Comment [2] thereto.

Comment.

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in RJC 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a

business activity, a new judge may, notwithstanding the prohibitions in RJC 3.11, continue in that activity for a reasonable period but in no event longer than one year. To the extent such activities are related to the judge's law practice, the 180 day requirement related to the winding up of a law practice applies. See RJC 3.10 and Comment [2] thereto.

[As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed September 3, 2013, effective September 3, 2013.]

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 15, 2015, the Supreme Court provided: "On February 25, 2011, the Tennessee Bar Association filed a petition asking the Court to amend Rule 10, Rules of the Tennessee Supreme Court, and thereby adopt a revised Code of Judicial Conduct ("Code"). The TBA's petition included as exhibits the TBA's proposed revision of Rule 10 and related proposed amendments to other court rules. On March 11, 2011, the Court filed an order soliciting public comments on the TBA's petition and proposed rules amendments. After considering the written comments received during the public-comment period, the Court filed an order on January 4, 2012, granting the TBA's petition and adopting a revised Code of Judicial Conduct (and related rules amendments), effective July 1, 2012. The Court filed additional orders on June 13, 2012, June 26, 2012, and June 29, 2012, making modifications and corrections to the revised Code previously adopted on January 4, 2012. As modified and corrected, the revised Code of Judicial Conduct took effect on July 1, 2012."

"During the time the TBA was developing its proposed revision of the Code of Judicial Conduct, the Tennessee Judicial Conference and the Tennessee Trial Judges Association formed a Joint Committee ("Joint Committee") to review the TBA's draft revision of the Code. The Joint Committee submitted a report to the

TBA's task force that was then drafting the proposed revision of the Code, and the Joint Committee issued a second report in the fall of 2011, during the public-comment period on the TBA's petition. In the fall of 2014, the Tennessee Judicial Conference reconstituted its prior committee to review the revised Code in light of experience over the two years since the revised Code was adopted and to make recommendations as to any proposed amendments to the revised Code."

"On June 8, 2015, the Tennessee Judicial Conference transmitted to Chief Justice Sharon G. Lee the Joint Committee's "Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct." The Supreme Court has decided to treat the Joint Committee's Report as a petition to amend Rule 10 (Code of Judicial Conduct) and to solicit public comments on the proposed amendments set out in the Report. Accordingly, the Court hereby solicits written comments regarding the Joint Committee's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. A copy of the Joint Committee's Report is attached as an appendix to this Order. The deadline for submitting written comments is Friday, August 14, 2015. Written comments should be addressed to: James Hivner, Clerk, Re: Tenn. Sup. Ct. R. 10, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407, and should reference the docket number set out above [No. ADM2015-01092].

The proposed revisions as set forth in the Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct would amend the Application section by deleting the phrase "or an administrative judge or hearing officer" at the end of (B).

CANON 1. A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the

Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised

Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Law Reviews. Ethical Requirements for Ju-

dicial Candidates (Joe G. Riley), 26 No. 3, Tenn. B.J. 12 (1990).

Tennessee Rules of Citation (Lewis L. Laska), 12 Mem. St. U. L. Rev. 547 (1982).

Rule 1.1 Compliance with the Law. A judge shall comply with the law, including the Code of Judicial Conduct. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised

Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 1.2 Promoting Confidence in the Judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

NOTES TO DECISIONS

ANALYSIS

- 1. Judge's Compensation.
- 2. Appearance of Impropriety.
- 3. Recusal.

1. Judge's Compensation.

Under former Tenn. Sup. Ct. R. 10, Canon 3(E), the high court's participation in an appeal challenging the Tennessee Plan, former T.C.A. §§ 17-4-101 through 17-4-119, which provided for the selection and evaluation of state appellate judges, had to be measured against an objective standard; as there was an appearance

of the court members' economic interest in their own compensation, they recused themselves. *Hooker v. Haslam*, 393 S.W.3d 156, 2012 Tenn. LEXIS 719 (Tenn. July 27, 2012).

2. Appearance of Impropriety.

Contact between the trial court and a driver did not rise to the level of creating the appearance of impropriety required in order to force a judge to withdraw from a case because the trial court's statements regarding its relationship with the driver showed that the driver and the trial court were fellow church members and acquaintances. *Liput v. Grinder*, 405 S.W.3d

664, 2013 Tenn. App. LEXIS 136 (Tenn. Ct. App. Feb. 27, 2013), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 615 (Tenn. July 11, 2013).

3. Recusal.

Recusal of post-conviction judge was obligated, even though defendant did not file a motion for recusal, because there was a reasonable basis for questioning the judge's impartiality based on comments which the judge made at the conclusion of the hearing when denying defendant post-conviction relief as the judge's statements communicated the judge's belief that defendant's trial counsel, whom the judge highly regarded, could never have been ineffective and expressed disdain for the proceedings which the judge was charged with conducting. *Cook v. State*, 606 S.W.3d 247, 2020 Tenn. LEXIS 294 (Tenn. Aug. 25, 2020).

Denial of defendant's motion for recusal of the trial judge was appropriate because defendant failed to establish that the judge, as a former deputy district attorney general, par-

ticipated in the case in any way that was personal or substantial such that the judge's impartiality reasonably might have been questioned, despite the judge's campaign letter stating that the judge supervised all criminal prosecutions in the county. A person of ordinary prudence would have had no reasonable basis to question the judge's impartiality in the case. *State v. Styles*, — S.W.3d —, 2020 Tenn. LEXIS 478 (Tenn. Oct. 30, 2020).

Denial of a motion to recuse a trial judge who served as a deputy district attorney general in the county when defendants were indicted by a grand jury was appropriate because a person of ordinary prudence would not have found a reasonable basis for questioning the judge's impartiality. Further, a reasonable person would have been hard-pressed to believe that the judge's former participation as a deputy district attorney general in all the new criminal cases in the county in a year was personal and substantial. *State v. Griffin*, — S.W.3d —, 2020 Tenn. LEXIS 479 (Tenn. Oct. 30, 2020).

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office. A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so. [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed June 26, 2012, effective July 1, 2012.]

Comment.

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office. A judge may use official letterhead if the judge's professional knowledge is germane to the purpose of the letter, such as writing a letter of recommendation for a former or current law clerk or a letter of recommendation for admission to law school.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges

write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

[5] Activities permitted by other provisions of these Rules do not fall within the scope of RJC 1.3. *See, e.g.*, RJC's 3.7, 3.13, 3.14, 4.1, 4.2, and 4.4. For example, when permitted by other provisions of these Rules, a judge may attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office, may contribute to a political organization or a candidate for public office, may publicly identify himself or herself as a candidate of a political organization, and may seek, accept, or use endorsements from a political organization without violating RJC 1.3.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

CANON 2. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 15, 2015, the Supreme Court provided: "On February 25, 2011, the Tennessee Bar Association filed a petition asking the Court to amend Rule 10, Rules of the Tennessee Supreme Court, and thereby adopt a revised Code of Judicial Conduct ("Code"). The TBA's petition included as exhibits the TBA's proposed revision of Rule 10 and related proposed amendments to other court rules. On March 11, 2011, the Court filed an order soliciting public comments on the TBA's petition and proposed rules amendments. After considering the written comments received during the public-comment period, the Court filed an order on January 4, 2012, granting the TBA's petition and adopting a revised Code of Judicial Conduct (and related rules amendments), effective July 1, 2012. The Court filed additional orders on June 13, 2012, June 26, 2012, and June 29, 2012, making modifications and corrections to the revised Code previously adopted on January 4, 2012. As modified and corrected, the revised Code of Judicial Conduct took effect on July 1, 2012."

"During the time the TBA was developing its proposed revision of the Code of Judicial Conduct, the Tennessee Judicial Conference and the Tennessee Trial Judges Association formed a Joint Committee ("Joint Committee") to review the TBA's draft revision of the Code. The Joint Committee submitted a report to the TBA's task force that was then drafting the proposed revision of the Code, and the Joint Committee issued a second report in the fall of 2011, during the public-comment period on the TBA's petition. In the fall of 2014, the Tennessee Judicial Conference reconstituted its prior committee to review the revised Code in light of experience over the two years since the revised Code was adopted and to make recommendations as to any proposed amendments to the revised Code."

Rule 2.1 Giving Precedence to the Duties of Judicial Office. The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] To ensure that judges are available to

"On June 8, 2015, the Tennessee Judicial Conference transmitted to Chief Justice Sharon G. Lee the Joint Committee's "Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct." The Supreme Court has decided to treat the Joint Committee's Report as a petition to amend Rule 10 (Code of Judicial Conduct) and to solicit public comments on the proposed amendments set out in the Report. Accordingly, the Court hereby solicits written comments regarding the Joint Committee's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. A copy of the Joint Committee's Report is attached as an appendix to this Order. The deadline for submitting written comments is Friday, August 14, 2015. Written comments should be addressed to: James Hivner, Clerk, Re: Tenn. Sup. Ct. R. 10, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407, and should reference the docket number set out above [No. ADM2015-01092].

The proposed revisions as set forth in the Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct would amend Canon 2 by deleting Rule 2.11(A)(4) and replacing it with the following: "In deciding whether a judge shall recuse himself or herself the judge shall consider, among other factors which are brought to the attention of the judge, whether a party or law firm for a party has made financial or in kind contributions to the judge or an opponent of the judge in a judicial election, if those contributions are extraordinary in amount so as to reasonably have caused a significant and disproportionate influence on the outcome of the election.

See: *Hugh M. Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009)."

Cross-References. Incompetency of judge, T.C.A. § 20-4-208; Tenn. Const. Art. 6, § 11.

Law Reviews. Ethical Requirements for Judicial Candidates (Joe G. Riley), 26 No. 3, Tenn. B.J. 12 (1990).

Attorney General Opinions. Trial judge who was former district attorney general, OAG 88-45 (3/1/88).

fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to

minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

[3] With respect to time devoted to personal and extrajudicial activities, this Rule must be construed in a reasonable manner. Family obligations, illnesses, emergencies, and permissible extrajudicial activities may require a

judge's immediate attention. Attending to those obligations and situations, temporary in nature, is not prohibited by this Rule.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.2 Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised

Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Attorney General Opinions. A judge who impartially applies state anti-discrimination law, as written and enacted by the General Assembly, is fulfilling the judicial duty to "uphold and apply the law," not manifesting bias or prejudice or engaging in harassment. Tenn. Sup. Ct. R. 10, Rule 2.3 does not, nor could it, prevent a judge from faithfully applying that law in a case before the court. Tenn. Sup. Ct. R. 10, Rule 3.6 does not establish a religious test that excludes from office members of any religious organization, including ones that disapprove of or condemn homosexuality. Rule 3.6 is inapplicable to membership in religious organizations. OAG 18-17, 2018 Tenn. AG LEXIS 16 (4/3/2018).

NOTES TO DECISIONS

ANALYSIS

1. Denial of Recusal.
2. Recusal Appropriate.

1. Denial of Recusal.

Denial of defendant's motion for recusal of the trial judge was appropriate because defendant failed to establish that the judge, as a former deputy district attorney general, participated in the case in any way that was personal or substantial such that the judge's impartiality reasonably might have been questioned, despite the judge's campaign letter stating that the judge supervised all criminal prosecutions in the county. A person of ordinary prudence would have had no reasonable basis to question the judge's impartiality in the case. *State v. Styles*, — S.W.3d —, 2020 Tenn. LEXIS 478 (Tenn. Oct. 30, 2020).

Denial of a motion to recuse a trial judge who served as a deputy district attorney general in

the county when defendants were indicted by a grand jury was appropriate because a person of ordinary prudence would not have found a reasonable basis for questioning the judge's impartiality. Further, a reasonable person would have been hard-pressed to believe that the judge's former participation as a deputy district attorney general in all the new criminal cases in the county in a year was personal and substantial. *State v. Griffin*, — S.W.3d —, 2020 Tenn. LEXIS 479 (Tenn. Oct. 30, 2020).

2. Recusal Appropriate.

Recusal of post-conviction judge was obligated, even though defendant did not file a motion for recusal, because there was a reasonable basis for questioning the judge's impartiality based on comments which the judge made at the conclusion of the hearing when denying defendant post-conviction relief as the judge's statements communicated the judge's belief that defendant's trial counsel, whom the judge

highly regarded, could never have been ineffective and expressed disdain for the proceedings which the judge was charged with conducting.

Cook v. State, 606 S.W.3d 247, 2020 Tenn. LEXIS 294 (Tenn. Aug. 25, 2020).

- Rule 2.3 Bias, Prejudice, and Harassment.**
- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual

favours, and other verbal or physical conduct of a sexual nature that is unwelcome.

Compiler’s Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Attorney General Opinions. A judge who impartially applies state anti-discrimination law, as written and enacted by the General Assembly, is fulfilling the judicial duty to “uphold and apply the law,” not manifesting bias or prejudice or engaging in harassment. Tenn. Sup. Ct. R. 10, Rule 2.3 does not, nor could it, prevent a judge from faithfully applying that law in a case before the court. Tenn. Sup. Ct. R. 10, Rule 3.6 does not establish a religious test that excludes from office members of any religious organization, including ones that disapprove of or condemn homosexuality. Rule 3.6 is inapplicable to membership in religious organizations. OAG 18-17, 2018 Tenn. AG LEXIS 16 (4/3/2018).

NOTES TO DECISIONS

- 1. Recusal Properly Denied.**
- Wife’s motion to recuse the trial judge was properly denied because the wife failed to show a reasonable basis for questioning the trial judge’s impartiality; the trial court did not rule in excess of the relief the husband requested,

and the transcript of the contempt hearing reflected no disdain toward the wife. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS

302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

Rule 2.4 External Influences on Judicial Conduct.

(A) A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.5 Competence, Diligence, and Cooperation.

(A) A judge shall perform judicial and administrative duties competently, promptly and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

[5] A judge is required by law to promptly dispose of cases. *See, e.g.,* Tenn. Code Ann.

§ 20-9-506 (in a non-jury case, judge must render decision and enter judgment within sixty days of completion of trial); Tenn. Code Ann. § 40-30-111(d) (court must rule within sixty days of conclusion of proof; final disposition of capital case must be made within one year of filing of petition); S. Ct. R. 11, § III(c) (no case may be held under advisement for more than sixty days; motions or other decisions that delay trial or final disposition shall not be held under advisement for more than thirty days, absent most compelling of reasons).

[6] A judge should be willing to lend assistance to fellow judges in his or her district or contiguous districts when needed because of death, illness, recusal or case overload. Judges have an affirmative duty to interchange and, by Supreme Court policy, have an obligation to interchange in contiguous judicial districts if needed. *See* Tenn. Code Ann. § 17-2-202, Tenn. Code Ann. § 16-2-509(d) and (e), Tenn. S. Ct. R. 11, § VII(c), and Supreme Court Policy 4.01 (Nov. 1, 2001). General sessions court judges have the same duty to interchange. Tenn. Code Ann. § 16-15-209(a)(1) and Tenn. Code Ann. § 17-2-208. Presiding judges have the necessary obligation and authority to reassign cases and judges within their districts. Tenn. Code

Ann. § 16-2-509(c), Tenn. Code Ann. § 17-2-109 and Tenn. S. Ct. R. 11, § III. The Supreme Court may designate and reassign judges as necessary. Tenn. Code Ann. § 16-3-502(3)(A), Tenn. Code Ann. § 16-2-509(c), Tenn. Code Ann. § 17-2-110 and Tenn. S. Ct. R.11, § IV.

Compiler's Notes. In its order filed January

4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.6 Ensuring the Right to Be Heard.

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage settlement of disputed matters in a proceeding but shall not act in a manner that coerces any party into settlement. A judge who participates in a judicial settlement conference shall not preside over the trial or any other contested issue in that matter. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] If a judge participates in the settlement of disputes, he or she should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Information obtained by a judge during a judicial settlement conference is not subject to the safeguards of the rules of evidence and procedure and may place the trial judge in an

untenable position as to the motions for new trial; judgment notwithstanding the verdict; additurs and remittiturs; credibility determinations; or other issues in which the judge may not be able to ignore facts that he or she learned during the settlement proceeding. Therefore, it is not appropriate for the same judge to participate in a judicial settlement conference and, if such proceeding does not result in the resolution of the matter, to subsequently preside over the trial of the same matter or participate in any other contested issue in that matter. *See also* RJC 2.11(A)(6).

[4] A judicial settlement conference, as discussed in this Rule, is a mediation conducted by a judicial officer as defined in Tenn. Sup. Ct. Rule 31. A judicial settlement conference does not include scheduling conferences or other pretrial conferences. *See, e.g.,* Tenn. R. Civ. P. 16 and Tenn. R. Crim. P. 17.1.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.7 Responsibility to Decide. A judge shall hear and decide matters assigned to the judge, except when disqualification is required by RJC 2.11 or other law. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Judges must be available to decide the matters that come before the court. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not

use disqualification to avoid cases that present difficult, controversial, or unpopular issues. There are times, however, when disqualification is required to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the

Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective

application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors.

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in RJC 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.9 Ex Parte Communications.

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties a reasonable opportunity to respond to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) [Intentionally omitted]

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this Rule, to screen written ex parte communications and to take appropriate action consistent with this Rule.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications authorized by law. When serving on a therapeutic or problem-solving court, including but not limited to a mental health court, a drug recovery court, a veteran's court, or a behavioral health recovery oriented compliance docket, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. However, if this ex parte communication becomes an issue at a subsequent adjudicatory proceeding in which the judge is presiding, the judge shall either (1) disqualify himself or herself if the judge gained personal knowledge of disputed facts under RJC 2.11(A)(1) or the judge's impartiality might reasonably be questioned under RJC 2.11(A) or (2) make disclosure of such communications subject to the waiver provisions of RJC 2.11(C).

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previ-

ously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 12, 2018, the Supreme Court provided that "On April 30, 2018, the Court entered an order soliciting public comments on a proposed amendment to Tennessee Supreme Court Rule 10, Canon 2, Rule of Judicial Conduct 2.9, Comment 4. The deadline for submitting written comments was May 30, 2018. The Court received written comments during the comment period from the Tennessee Bar Association ("TBA"), the Knoxville Bar Association ("KBA"), and Harold W. Duke, III. The TBA and the KBA supported the amendment, but Dr. Duke expressed opposition to the amendment's discretion given to judges for ex parte communication while serving on a problem-solving court. The Court thanks the TBA, the KBA, and Dr. Duke for their input.

"After due consideration, the Court hereby adopts the amendment to Tennessee Supreme Court Rule 10, Canon 2, Rule of Judicial Conduct 2.9, Comment 4, as set out in the attached Appendix. The amendment shall take effect immediately upon the filing of this Order."

NOTES TO DECISIONS

1. Ex Parte Communications.

Criminal court judge, although a member of the drug court team, did not receive ex parte communications or input from the drug court team before deciding to revoke defendant's community corrections. The mere fact that the criminal court judge was a judge of the drug court did not reasonably call into question his impartiality. *State v. Watson*, 507 S.W.3d 191, 2016 Tenn. Crim. App. LEXIS 153 (Tenn. Crim. App. Mar. 1, 2016), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 484 (Tenn. June 23, 2016).

In an appeal from a trial court judge's decision not to recuse herself based on a telephone call to a university department director concerning a potential expert witness' qualifications, the Supreme Court concluded that the communication qualified as an independent investigation under Tenn. Sup. Ct. R. 10, Canon 2.9. While perhaps ill-advised because she did not consult with the parties first, the judge's

conduct would not have given a person of ordinary prudence reason to question her impartiality. *Holsclaw v. Ivy Hall Nursing Home, Inc.*, 530 S.W.3d 65, 2017 Tenn. LEXIS 558 (Tenn. Sept. 19, 2017).

Conversation by the trial court and the Board of Professional Responsibility about scheduling did not constitute inappropriate ex parte communication because the Board's lawyer promptly notified the lawyer and his attorney of a chance meeting and conversation, and in their presence texted the trial judge the start time of the hearing; the trial judge and the Board's lawyer discussed only a scheduling matter, in particular, the time the hearing would begin. *Bd. of Prof'l Responsibility of the Supreme Court of Tenn. v. Justice*, 577 S.W.3d 908, 2019 Tenn. LEXIS 288 (Tenn. July 2, 2019), cert. denied, 206 L. Ed. 2d 187, 140 S. Ct. 1212, — U.S. —, 2020 U.S. LEXIS 944 (U.S. Feb. 24, 2020).

Rule 2.10 Judicial Statements on Pending and Impending Cases.

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships

existing on, and conduct taken from July 1, 2012, forward.

Rule 2.11 Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter;

(d) previously presided as a judge over the matter in an inferior court; or

(e) previously participated in a judicial settlement conference in the matter. Prior participation in a judicial settlement conference does not prohibit the judge from disposing of any uncontested issues in the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1) or for participation in a judicial settlement

conference under paragraph (A)(6)(e), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) Upon the making of a motion seeking disqualification, recusal, or a determination of constitutional or statutory incompetence, a judge shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge is obligated not to hear or decide matters in which disqualification is required, even though a motion to disqualify is not filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be sub-

stantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

[7] The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or supported the judge in his or her election does not of itself disqualify the judge. Absent other facts, campaign contributions within the limits of the "Campaign Contributions Limits Act of 1995," Tennessee Code Annotated Title 2, Chapter 10, Part 3, or similar law should not result in disqualification. However, campaign contributions or support a judicial candidate receives may give rise to disqualification if the judge's impartiality might reasonably be questioned. In determining whether a judge's impartiality might reasonably be questioned for this reason, a judge should consider the following factors among others:

(1) The level of support or contributions given, directly or indirectly, by a litigant in relation both to aggregate support (direct and indirect) for the individual judge's campaign and to the total amount spent by all candidates for that judgeship;

(2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the disqualification question;

(3) The timing of the support or contributions in relation to the case for which disqualification is sought; and

(4) If the supporter or contributor is not a litigant, the relationship, if any, between the supporter or contributor and (i) any of the litigants, (ii) the issue before the court, (iii) the judicial candidate or opponent, and (iv) the total support received by the judicial candidate or opponent and the total support received by all candidates for that judgeship.

[8] Trial judges sometimes sit by designation on courts of appeal, and vice versa. Such judges should not hear cases over which they presided in a different court, and paragraph A(6)(d) makes that clear. This Rule, however, applies only to judges who have heard the case in “an inferior court,” and does not apply to a judge who decided a case on a panel of an appellate court subsequently participating in the rehearing of the case en banc with that same court.

[9] There are several bases upon which a judge should determine whether to preside over a case. These include this Rule, Tennessee Constitution Article VI, Section 11 (incompetence) and Tenn. Code Ann. Title 17, Chapter 2 (incompetence, disability and interchange). This Rule requires judges to employ constitutional, statutory and procedural rules to determine motions for issues related to whether the judge should preside over a case. For example, Tenn. Sup. Ct. R. 10B governs the filing and disposition of motions for disqualification or recusal, as well as appeals from the denial of such motions.

[10] In rare instances, a motion for recusal

might seek the recusal of all judges sitting as a multi-judge court (i.e., an intermediate appellate court or the Supreme Court). Paragraph (A) of this Rule provides that “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]” Also, the specific grounds for disqualification listed in this Rule necessarily apply to individual judges. For both reasons, a motion seeking to recuse all members of a multi-judge court must be treated as an individual motion as to each judge of the court; each judge therefore must rule upon the motion as to the alleged grounds pertaining to that individual judge.

[11] In courts not of record, such as general sessions and municipal courts, a written notation on the judgment, warrant, citation or other pleading before the court is sufficient to meet the requirements in paragraph (D) that the judge file a “written order” and, if denying the motion, that “the judge shall state in writing the grounds upon which he or she denies the motion.” In those courts, no separate order regarding the motion need be filed by the judge.

Compiler’s Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

NOTES TO DECISIONS

ANALYSIS

1. Bias.
2. Judge’s Compensation.
3. Disqualification Not Required.
4. Recusal Appropriate.
5. Recusal Denied.

1. Bias.

Trial court properly denied a husband’s motion for recusal because the contention that the trial judge showed bias by refusing to allow the husband to testify in support of his motion for recusal was not sufficient, standing alone, to justify recusal. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Denial of an attorney’s motion for recusal was appropriate because there was no reasonable basis for questioning the judge’s impartiality in that the attorney’s request for the judge’s recusal was singularly predicated upon the attorney’s filing of an unrelated complaint against the judge with the Tennessee Board of Judicial Conduct. However, there was no evidence that the judge possessed any actual bias or prejudice against the attorney. *Salas v. Ros-*

deutscher, — S.W.3d —, 2021 Tenn. App. LEXIS 84 (Tenn. Ct. App. Mar. 7, 2021).

2. Judge’s Compensation.

Under former Tenn. Sup. Ct. R. 10, Canon 3(E), the high court’s participation in an appeal challenging the Tennessee Plan, former T.C.A. §§ 17-4-101 through 17-4-119, which provided for the selection and evaluation of state appellate judges, had to be measured against an objective standard; as there was an appearance of the court members’ economic interest in their own compensation, they all recused themselves. *Hooker v. Haslam*, 393 S.W.3d 156, 2012 Tenn. LEXIS 719 (Tenn. July 27, 2012).

3. Disqualification Not Required.

In a divorce, a father’s motion for recusal, alleging: (1) the trial judge, while practicing law, and the judge’s associate at the time met with the mother for approximately one hour each to discuss possible representation in a divorce, which representation did not occur; and (2) the judge had represented the father’s paramour, who was, allegedly, a significant participant in the case, was properly denied because no evidence demonstrated that these prior involvements resulted in any personal

bias on the part of the judge, nor did the judge's rulings. *Duke v. Duke*, 398 S.W.3d 665, 2012 Tenn. App. LEXIS 704 (Tenn. Ct. App. Oct. 2, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 225 (Tenn. Feb. 26, 2013).

Evidence did not demonstrate any reasonable basis for questioning the judge's impartiality; the matter had been pending before the same judge for nearly two years, the judge's statements did not suggest that he made a predetermined decision on the merits of the case, plus the statements occurred during the course of the litigation, yet no action was taken on behalf of the wife to seek recusal of the trial judge. *Cain-Swope v. Swope*, 523 S.W.3d 79, 2016 Tenn. App. LEXIS 986 (Tenn. Ct. App. Dec. 23, 2016), appeal denied, *Cain-Swope v. Swope*, — S.W.3d —, 2017 Tenn. LEXIS 227 (Tenn. Apr. 12, 2017).

In an appeal from a trial court judge's decision not to recuse herself based on a telephone call to a university department director concerning a potential expert witness' qualifications, the Supreme Court concluded that the trial judge did not err by declining to recuse herself, as any knowledge that could be said to have been obtained by the trial judge did not qualify as "personal knowledge" pursuant to Tenn. Sup. Ct. R. 10, Canon 2.11. *Holsclaw v. Ivy Hall Nursing Home, Inc.*, 530 S.W.3d 65, 2017 Tenn. LEXIS 558 (Tenn. Sept. 19, 2017).

Trial judge fulfilled his duty because he stated that he had no knowledge of the facts or circumstances upon which a husband relied in seeking the judge's recusal; the statements the judge made from the bench and in the order denying the motion to recuse did not require recusal because the judge's response had no bearing on the substantive issues in the parties' divorce, only the motion for recusal. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Wife failed to demonstrate a reasonable basis for questioning the judge's impartiality, as she demonstrated no bias stemming from extrajudicial sources or any bias sufficiently pervasive so as to deny her a fair trial; the judge had no duty to recuse himself simply because the wife was dissatisfied with the rulings against her. *Harcrow v. Harcrow*, — S.W.3d —, 2019 Tenn. App. LEXIS 155 (Tenn. Ct. App. Mar. 27, 2019).

Appellant failed to come forward with any evidence that would give a person of ordinary prudence a reasonable basis for questioning the chancellor's impartiality and thus the denial of her motion to recuse was affirmed; although appellant came forward with her own affidavit and included the chancery court's order granting an in limine motion, nothing supplied a basis for questioning the chancellor's impartiality and she did not claim she was not provided the opportunity to be heard or that any communications by appellee were outside the re-

cord. *Lee v. Lee*, — S.W.3d —, 2019 Tenn. App. LEXIS 276 (Tenn. Ct. App. May 31, 2019).

Trial court's decision to deny a motion for recusal was affirmed where the lawyer who provided the letter of recommendation for the judge's appointment to a vacancy on the appellate court had no involvement in the instant case, even though the lawyer had a de minimis interest in the outcome of the case because the law firm representing the hospitals was one of the larger multi-city firms in the state. *Hamilton v. Methodist Healthcare Memphis Hosps.*, — S.W.3d —, 2019 Tenn. App. LEXIS 442 (Tenn. Ct. App. Sept. 6, 2019).

Denial of a motion for disqualification of a judge in a legal malpractice action was appropriate because the chancellor—who had presided in the underlying class action that was brought by the client—was not likely be a material witness in the litigation. There was no need for the chancellor to testify because the jury was not in a position to make the determination of whether any alleged settlements would have been approved in the underlying litigation as that question was for the court, not the jurors as factfinders. *Hawthorne v. Morgan & Morgan Nashville PLLC*, — S.W.3d —, 2020 Tenn. App. LEXIS 576 (Tenn. Ct. App. Dec. 17, 2020).

4. Recusal Appropriate.

Because a reasonable person would have had a reasonable basis for questioning a judge's impartiality given a prior case filed by the claimant's law firm against the judge's spouse and a professional corporation, in which the judge was previously an officer, the motion for recusal by the claimant should have been granted. *Young v. Dickson*, — S.W.3d —, 2019 Tenn. App. LEXIS 433 (Tenn. Ct. App. Sept. 3, 2019).

Recusal of post-conviction judge was obligated, even though defendant did not file a motion for recusal, because there was a reasonable basis for questioning the judge's impartiality based on comments which the judge made at the conclusion of the hearing when denying defendant post-conviction relief as the judge's statements communicated the judge's belief that defendant's trial counsel, whom the judge highly regarded, could never have been ineffective and expressed disdain for the proceedings which the judge was charged with conducting. *Cook v. State*, 606 S.W.3d 247, 2020 Tenn. LEXIS 294 (Tenn. Aug. 25, 2020).

Recusal was appropriate when a trial court stated, for the first time, in response to a motion for recusal, its reasons for granting a motion for a new trial several months earlier. By granting the motion for a new trial without explanation, the trial court was presumed to have weighed the evidence and found the jury's verdict to be against the weight of the evidence so that the judge's failing to disqualify the

judge constituted grounds for recusal as a reasonable basis for questioning the judge's impartiality was created. *Buckley v. Elephant Sanctuary Tenn. Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 315 (Tenn. Ct. App. July 14, 2020).

Judge was recused because the trial judge's judicial application for appointment, of which the court took judicial notice, stated that he supervised the district attorneys office's litigation in all courts with criminal jurisdiction, that his supervisory duties included approval of cases presented for direct review by the Grand Jury, and the trial judge routinely advised defendants concerning the judge's prior employment as a Deputy District Attorney General in order to discuss with counsel the waiver of any potential conflict of interest with him being the judge in a case. *State v. Styles*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 712 (Tenn. Crim. App. Mar. 10, 2020), rev'd, — S.W.3d —, 2020 Tenn. LEXIS 478 (Tenn. Oct. 30, 2020).

Trial judge should have recused himself and retroactive recusal was warranted as his impartiality might have reasonably been questioned because the gist of the judge's comments was that the judge blamed one of the attorney's for the court's exposure to negative publicity, possibly drawing the scrutiny of the judge's family and friends, that the judge did not like that, and that the judge's day would come; and a reasonable person would have construed the remarks as indicating that the judge might have sought retribution against the attorney for a perceived wrongdoing unrelated to the contempt charges against the attorney. *Chase v. Stewart*, — S.W.3d —, 2021 Tenn. App. LEXIS 42 (Tenn. Ct. App. Feb. 5, 2021).

5. Recusal Denied.

Wife's motion to recuse the trial judge was properly denied because the wife failed to show a reasonable basis for questioning the trial judge's impartiality; the trial court did not rule in excess of the relief the husband requested, and the transcript of the contempt hearing reflected no disdain toward the wife. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS 302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

Mother failed to show any bias or partiality where although the guardian ad litem had served as a law clerk to the trial court while the divorce was pending, there was no evidence that the law clerk had any involvement with the case. The guardian ad litem's report did not serve as a source of bias for similar reasons. *Dye v. Dye*, — S.W.3d —, 2019 Tenn. App. LEXIS 607 (Tenn. Ct. App. Dec. 18, 2019).

Denial of defendant's motion for recusal of the trial judge was appropriate because defendant failed to establish that the judge, as a former deputy district attorney general, par-

ticipated in the case in any way that was personal or substantial such that the judge's impartiality reasonably might have been questioned, despite the judge's campaign letter stating that the judge supervised all criminal prosecutions in the county. A person of ordinary prudence would have had no reasonable basis to question the judge's impartiality in the case. *State v. Styles*, — S.W.3d —, 2020 Tenn. LEXIS 478 (Tenn. Oct. 30, 2020).

Denial of a motion to recuse a trial judge who served as a deputy district attorney general in the county when defendants were indicted by a grand jury was appropriate because a person of ordinary prudence would not have found a reasonable basis for questioning the judge's impartiality. Further, a reasonable person would have been hard-pressed to believe that the judge's former participation as a deputy district attorney general in all the new criminal cases in the county in a year was personal and substantial. *State v. Griffin*, — S.W.3d —, 2020 Tenn. LEXIS 479 (Tenn. Oct. 30, 2020).

Appellate court erred in reversing the trial court's denial of defendant's motion for recusal because, despite the trial judge's prior, general supervisory responsibilities as a deputy district attorney, the trial judge had no knowledge or involvement, supervisory or otherwise, with defendant's case, and a person of ordinary prudence in the judge's position, knowing all of the facts known to the trial judge, would not find a reasonable basis to question the judge's impartiality. *State v. Clark*, — S.W.3d —, 2020 Tenn. LEXIS 480 (Tenn. Oct. 30, 2020).

Evidence did not establish that a judge was a material witness, so as to require his recusal under Tenn. Sup. Ct. R. 10, Canon 2, Rule 2.11(A)(2)(d), where there was no evidence suggesting that his visit to the property during a chancery court suit involving the dissolution of a law firm amounted to an independent investigation of the facts related to the circuit court suit seeking to recover for damages to the property. *Hill Boren Props. v. Boren*, — S.W.3d —, 2020 Tenn. App. LEXIS 11 (Tenn. Ct. App. Jan. 10, 2020).

Denial of a motion for recusal of a claims commissioner was appropriate because no reasonable basis was found for questioning the claims commissioner's impartiality as the rulings by the commissioner did not create the appearance of bias. *Herron v. State*, — S.W.3d —, 2020 Tenn. App. LEXIS 288 (Tenn. Ct. App. June 25, 2020).

Denial of a motion for recusal in a will contest was appropriate because any knowledge of the trial court judge pertaining to the preparation of deeds while in private practice was not relevant to the ultimate question before the judge of whether the will was a product of undue influence, the challenger's threatened litigation against the trial court judge did not show that the judge had an interest in the

outcome of the proceeding, and comments that were made by the trial court judge were not indicative of his bias or prejudice. In re Estate of Dorning, — S.W.3d —, 2020 Tenn. App. LEXIS 294 (Tenn. Ct. App. June 25, 2020).

Although a husband alleged that the judge had to be recused in a divorce action because the husband claimed that the judge could not remain impartial when the husband was accused of soliciting the murder of a judicial colleague, the judge did not have a duty to recuse in the case because there were no facts alleged or shown in the record either that demonstrated actual bias on the part of the judge, or that would have led a well-informed, disinterested observer to question the impartiality of the judge in the case. *Montgomery v.*

Montgomery, — S.W.3d —, 2020 Tenn. App. LEXIS 488 (Tenn. Ct. App. Nov. 2, 2020).

Although defendant argued that recusal by the judge was required from trial and the post-conviction proceedings because the judge was employed at the district attorney's office and a deputy district attorney with supervisory authority over the prosecutors in defendant's case, defendant was not entitled to relief on the basis of these claims because the trial/post-conviction judge stated that the judge had no knowledge of defendant's case prior to the time the case came before the judge after the judge's appointment to the bench. *Wilson v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 806 (Tenn. Crim. App. Dec. 22, 2020).

Rule 2.12 Supervisory Duties.

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her

supervision administer their workloads promptly. For further guidance on supervisory duties, see Tennessee Code Annotated section 16-2-509(b) (duties of the presiding judge) and other applicable laws, such as Metropolitan Nashville Charter § 14.09A.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

NOTES TO DECISIONS

1. Secretarial Assistant.

Any policy requiring an incoming judge to continue the employment of an outgoing judge's secretarial assistant, whom the incoming judge may not know and with whom the incoming judge may not have an established positive working relationship, would pose a risk of undermining the efficient functioning of the judicial system. *Moore-Pennoyer v. State*, 515 S.W.3d 271, 2017 Tenn. LEXIS 184 (Tenn. Mar. 28, 2017).

Trial judge must remain free to select, supervise, and remove the secretarial assistant, and in turn, the secretarial assistant must remain free to leave the employment at any time should the secretarial assistant's working relationship with the trial judge become strained or dysfunctional; these purposes are served by the employment-at-will-doctrine. *Moore-Pennoyer v. State*, 515 S.W.3d 271, 2017 Tenn. LEXIS 184 (Tenn. Mar. 28, 2017).

Rule 2.13 Administrative Responsibilities.

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, the lawyer's firm or the lawyer's spouse or domestic partner, has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned, or learns of such contribution or support by means of a timely motion by a party or other person properly interested in the matter, unless:

(1) the position is substantially uncompensated;

(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions or given support; or

(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(D) When a judge refers litigants to community resources as a condition or requirement relating to litigation, such referrals shall be made impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. For purposes of this provision, a "community resource" is any person or organization providing services such as, but not limited to: counseling services; driver education or traffic safety programs; mental health, substance abuse, or other treatment programs; parenting classes; private probation services; and similar types of services. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Appointees of a judge include assigned counsel, officials such as referees, magistrates, commissioners, special masters, special judges, substitute judges, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative, as well as those relatives defined in Tennessee Code Annotated sections § 3-1-101 et seq., the Tennessee State Employees Uniform Nepotism Policy.

[3] The rule against making administrative appointments of lawyers who have provided such contributions or support to a judge's election campaign that the judge's impartiality might reasonably be questioned includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimburse-

ment for out-of-pocket expenses. In determining whether a judge's impartiality might reasonably be questioned in connection with such appointments, a judge should consider the following factors among others:

(1) The level of support or contributions given, directly or indirectly, by a lawyer, the lawyer's firm or the lawyer's spouse or domestic partner, in relation both to aggregate support (direct and indirect) for the individual judge's campaign and to the total amount spent by all candidates for that judgeship;

(2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the question of the judge's impartiality; and

(3) The timing of the support or contributions in relation to the appointment.

[4] It is increasingly common for trial judges, either directly or acting through court employees or court-affiliated agencies, to refer litigants to a variety of community resources. For example, litigants may be required by a court to complete treatment programs, parenting classes, driver education or traffic safety programs, etc., or to be monitored by private pro-

bation services. Paragraph (D) requires that such referrals be made impartially and on the basis of merit, and without nepotism or favoritism.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the

Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.14 Disability and Impairment. A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satism a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers,

such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. *See* RJC 2.15.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 2.15 Responding to Judicial and Lawyer Misconduct.

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that

judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 23, 2016, the Supreme Court provided that: "The Retired Judges Committee of the Tennessee Judicial Conference is establishing a state-wide judges assistance program to be known as the Tennessee Retired Judges Confidential Assistance Program, through which volunteer retired Tennessee judges will provide confidential assistance to sitting Tennessee judges regarding personal

and professional matters. In order to encourage sitting judges to seek assistance through this Program, the volunteer retired judges are required to treat all information received in the course of providing such assistance as confidential, and all such information is deemed privileged and not subject to disclosure to the same extent as information subject to the attorney-client privilege."

"The Court has determined that in order to foster this Program, it is necessary to amend certain provisions of the Rules of Professional Conduct and the Rules of Judicial Conduct, Rules 8 and 10 of the Rules of the Tennessee Supreme Court, which address the reporting of professional misconduct. The Court has determined to solicit public comments on the proposed amendments."

"Accordingly, the Court solicits written comments regarding the proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The proposed amendments to Rules 8 and 10 are set out Appendices A and B to this Order. The deadline for submitting written comments is Monday, July 25, 2016. Written comments should be addressed to: James M. Hivner, Clerk, RE: Tenn. Sup. Ct. R. 8 and 10, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407 and should reference the docket number set out above [No. ADM2016-01250]."

The rule changes in its order filed June 23, 2016 do not appear to have been adopted by the court as of May 14, 2018.

NOTES TO DECISIONS

ANALYSIS

- 1. Informing Appropriate Authority.
- 2. Allegations Insufficient.

1. Informing Appropriate Authority.

Plaintiffs offered no argument claiming that the imposition of sanctions was error or that the trial court acted without legal authority in notifying the state bar of counsel's conduct, and there was no error in the trial court's decision to inform the appropriate authority of counsel's conduct. *Diemoz v. Huneycutt*, — S.W.3d —, 2020 Tenn. App. LEXIS 204 (Tenn. Ct. App. May 6, 2020).

Rule 2.16 Cooperation with Disciplinary Authorities.

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

2. Allegations Insufficient.

Trial court did not err in finding that appellants' allegations did not warrant further action under the rule; appellants cited no authority to show that this judgment was in error, and if appellants believed that the trial court made this decision in error or that a judge failed to comply with an ethical requirement, they had the option to lodge their own complaint with the Board of Judicial Conduct. *Reliant Bank v. Bush*, — S.W.3d —, 2021 Tenn. App. LEXIS 44 (Tenn. Ct. App. Feb. 9, 2021).

Comment.

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 23, 2016, the Supreme Court provided that: "The Retired Judges Committee of the Tennessee Judicial Conference is establishing a state-wide judges assistance program to be known as the Tennessee Retired Judges Confidential Assistance Program, through which volunteer retired Tennessee judges will provide confidential assistance to sitting Tennessee judges regarding personal and professional matters. In order to encourage sitting judges to seek assistance through this Program, the volunteer retired judges are required to treat all information received in the course of providing such assistance as confidential, and all such information is deemed privi-

leged and not subject to disclosure to the same extent as information subject to the attorney-client privilege."

"The Court has determined that in order to foster this Program, it is necessary to amend certain provisions of the Rules of Professional Conduct and the Rules of Judicial Conduct, Rules 8 and 10 of the Rules of the Tennessee Supreme Court, which address the reporting of professional misconduct. The Court has determined to solicit public comments on the proposed amendments."

"Accordingly, the Court solicits written comments regarding the proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The proposed amendments to Rules 8 and 10 are set out Appendices A and B to this Order. The deadline for submitting written comments is Monday, July 25, 2016. Written comments should be addressed to: James M. Hivner, Clerk, RE: Tenn. Sup. Ct. R. 8 and 10, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407 and should reference the docket number set out above [No. ADM2016-01250]."

The rule changes in its order filed June 23, 2016 do not appear to have been adopted by the court as of May 14, 2018.

CANON 3. A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 15, 2015, the Supreme Court provided: "On February 25, 2011, the Tennessee Bar Association filed a petition asking the Court to amend Rule 10, Rules of the Tennessee Supreme Court, and thereby adopt a revised Code of Judicial Conduct ("Code"). The TBA's petition included as exhibits the TBA's proposed revision of Rule 10 and related proposed amendments to other court rules. On March 11, 2011, the Court filed an order soliciting public comments on the TBA's petition and proposed rules amendments. After considering the written comments received during the public-comment period, the Court filed an order on January 4, 2012, granting the TBA's petition and adopting a revised Code of Judicial Conduct (and related rules amendments), effective July 1, 2012. The Court filed additional orders

on June 13, 2012, June 26, 2012, and June 29, 2012, making modifications and corrections to the revised Code previously adopted on January 4, 2012. As modified and corrected, the revised Code of Judicial Conduct took effect on July 1, 2012."

"During the time the TBA was developing its proposed revision of the Code of Judicial Conduct, the Tennessee Judicial Conference and the Tennessee Trial Judges Association formed a Joint Committee ("Joint Committee") to review the TBA's draft revision of the Code. The Joint Committee submitted a report to the TBA's task force that was then drafting the proposed revision of the Code, and the Joint Committee issued a second report in the fall of 2011, during the public-comment period on the TBA's petition. In the fall of 2014, the Tennessee Judicial Conference reconstituted its prior committee to review the revised Code in light of experience over the two years since the revised Code was adopted and to make recommendations as to any proposed amendments to the revised Code."

"On June 8, 2015, the Tennessee Judicial Conference transmitted to Chief Justice Sha-

ron G. Lee the Joint Committee's "Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct." The Supreme Court has decided to treat the Joint Committee's Report as a petition to amend Rule 10 (Code of Judicial Conduct) and to solicit public comments on the proposed amendments set out in the Report. Accordingly, the Court hereby solicits written comments regarding the Joint Committee's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. A copy of the Joint Committee's Report is attached as an appendix to this Order. The deadline for submitting written comments is Friday, August 14, 2015. Written comments should be addressed to: James Hivner, Clerk, Re: Tenn. Sup. Ct. R. 10, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407, and should reference the docket number set out above [No. ADM2015-01092].

The proposed revisions as set forth in the Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct would amend Canon 3 by revising 3.1(E) to read: "(E) make use of court premises, staff, stationery, equipment, or other resources in a manner prohibited by these rules."; revising Rule 3.6 to read: "(A) A judge shall not hold

membership in any organization that practices invidious discrimination."

"(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination."

"(C) A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices."; and revising the comment to Rule 3.7 by adding to Comment (1) the following language: "With respect to whether an event serves a fund-raising purpose, see Cynthia Gray, *Defining Charitable "Fund-Raising Event,"* 36 *Judicial Conduct Reporter*, 1; 4-7 (Spring 2014)."

Attorney General Opinions. Elected general sessions judge from accepting honoraria for lecturing about the creation and history of his specialized court and assisting other counties and cities in establishing such courts, OAG 02-004 (1/2/02).

A part-time general sessions judge may not serve as a commission member during his or her term in judicial office, notwithstanding the exemption appearing in Supreme Court Rule 10, Code of Judicial Conduct, Canon 4C(2), OAG 05-139 (9/12/05).

Rule 3.1 Extrajudicial Activities in General. A judge may engage in personal or extrajudicial activities, except as prohibited by law or this Code. However, when engaging in such activities, a judge shall not:

(A) participate in activities that will interfere with the proper and timely performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make inappropriate use of court premises, staff, stationery, equipment, or other resources. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted

for profit, even when the activities do not involve the law. *See* RJC 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that

demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's personal and extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* RJC 3.6.

[4] While engaged in personal or extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contri-

butions or memberships for an organization, even as permitted by RJC 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.2 Appearances before Governmental Bodies and Consultation with Government Officials. A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is self-represented in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as RJC 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, RJC 2.10, governing public comment on pending and impending matters, and RJC 3.1(C), prohibiting judges from engaging in personal or extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial

positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

[4] On occasion, some judges, including general sessions court judges, juvenile court judges and municipal court judges, find it necessary to appear before legislative bodies to address budget requests and similar concerns. Such appearances fall within the exceptions set forth in 3.2(A) and (B). Similarly, judges may appear before governmental bodies to endorse projects and programs directly related to the law, the legal system, the administration of justice and the provision of services to those coming before the courts, and may actively support the need for funding of such projects or programs. This support can occur by personal appearance or by writing, such as a letter to be submitted with a request for funding by an entity that provides services to those coming before the courts.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.3 Testifying as a Character Witness. A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. *See* RJC 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Rule 3.4 Appointments to Governmental Positions. A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] RJC 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

Rule 3.5 Use of Nonpublic Information. A judge shall not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] In the course of performing judicial duties, a judge may acquire information that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties. The judge should take special care to ensure that court staff, court officials, and others subject to the judge's direction and control are aware of this Rule and shall require them to act in a manner consistent with the judge's obligations under this Code. *See* RJC 2.12(A).

[2] This Rule is not intended, however, to

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.6 Affiliation with Discriminatory Organizations.

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's

attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious

discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Attorney General Opinions. A judge who impartially applies state anti-discrimination law, as written and enacted by the General Assembly, is fulfilling the judicial duty to "uphold and apply the law," not manifesting bias or prejudice or engaging in harassment. Tenn. Sup. Ct. R. 10, Rule 2.3 does not, nor could it, prevent a judge from faithfully applying that law in a case before the court. Tenn. Sup. Ct. R. 10, Rule 3.6 does not establish a religious test that excludes from office members of any religious organization, including ones that disapprove of or condemn homosexuality. Rule 3.6 is inapplicable to membership in religious organizations. OAG 18-17, 2018 Tenn. AG LEXIS 16 (4/3/2018).

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.

(A) Subject to the requirements of RJC 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic

organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

[6] With regard to a judge's obligations to supervise staff as to matters addressed in this Rule, see RJC 2.12.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.8 Appointments to Fiduciary Positions.

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, conservator, attorney in fact, or other personal representative. A judge may, however, serve in one of these capacities for a member of the judge's family, or in a fiduciary capacity for the judge's place of worship, only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under RJC 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.9 Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law. *See* Tenn. S. Ct. R. 31, § 17 (permitting various part-time judges to serve as mediators) and Tenn. S. Ct. R. 31, § 20 (authorizing trial judges to participate in judicial settlement conferences). *See also* RJC 2.6 and Comments [2], [3], and [4] thereto regarding the role of a judge

in judicial settlement conferences. A judge who participates in a judicial settlement conference is precluded by RJC 2.6 from presiding over the trial or any other contested issues in that matter.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.10 Practice of Law. A judge shall not practice law. A judge may act prose and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum. A newly elected or appointed judge can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than 180 days after assuming office.

This Rule does not prohibit the practice of law pursuant to, and in the context of, a judge's military service. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. *See* RJC 1.3.

[2] The only law practice allowable is that which is necessary to wind up a law practice. Accordingly, no new matters may be accepted. *See* Tenn. Code Ann. § 23-3-102 (public officers prohibited from practicing law) and § 17-1-105 (judges and chancellors prohibited from practicing law, except for winding up his or her law

practice). The 180-day bright-line rule in winding up a law practice does not prohibit the judge from receiving fees after this deadline for services performed prior to the deadline. *See State v. Lipford*, 67 S.W.3d 79 (Tenn. Crim. App. 2001).

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.11 Financial, Business, or Remunerative Activities.

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

- (1) a business closely held by the judge or members of the judge's family; or
- (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

- (1) interfere with the proper performance of judicial duties;
- (2) lead to frequent disqualification of the judge;
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- (4) result in violation of other provisions of this Code. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other personal or extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. *See* RJC 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. *See* RJC 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule. *See* Application VI.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

NOTES TO DECISIONS

1. Judge's Compensation.

Under former Tenn. Sup. Ct. R. 10, Canon 3(E), the high court's participation in an appeal challenging the Tennessee Plan, former T.C.A. §§ 17-4-101 through 17-4-119, which provided for the selection and evaluation of state appel-

late judges, had to be measured against an objective standard; as there was an appearance of the court members' economic interest in their own compensation, they recused themselves. *Hooker v. Haslam*, 393 S.W.3d 156, 2012 Tenn. LEXIS 719 (Tenn. July 27, 2012).

Rule 3.12 Compensation for Extrajudicial Activities. Unless prohibited by law, a judge may accept reasonable compensation for personal or extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] A judge may be permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. *See* RJC 2.1. Other law may prohibit the accepting of such compensation. *See, e.g.,* Tenn. Code Ann. § 2-10-116.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. *See* RJC 3.15.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under RJC 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial; or

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity, as is the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept gifts, loans, bequests, benefits, or other things of value. A judge must report such acceptance, to the extent required by RJC 3.15, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. RJC 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it. A gift to a judge, other than ordinary social hospitality, from a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge, may be prohibited if acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. Additionally, other law may prohibit the accepting of a gift or other thing of value. *See, e.g., Tenn. Code Ann. § 2-10-116.*

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the

appearance of friends or relatives in a case would require the judge's disqualification under RJC 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] RJC 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade RJC 3.13 and influence the judge indirectly.

Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] RJC 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including RJC's 4.3 and 4.4.

[6] A judge shall only accept a gift incident to a public testimonial if the judge's receipt of the public testimonial is a permitted activity under RJC 3.7(A)(4) and Comment [1] thereto.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges.

(A) Unless otherwise prohibited by RJC's 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) [Intentionally omitted] [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. *See also* Tenn. Code Ann. § 2-10-116(a) (generally prohibiting a "public official" from accepting an honorarium, but also providing that "honorarium" does not include the reimbursement of actual and necessary travel expenses, meals and lodging associated with an appearance, speech or article). To comply with RJC's 3.1 and 3.13(A), the judge must

undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(1) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(2) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(3) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(4) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(5) whether information concerning the activity and its funding sources is available upon inquiry;

(6) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under RJC 2.11;

(7) whether differing viewpoints are presented; and

(8) whether a broad range of judicial and

nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 3.15 Reporting Requirements.

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by RJC 3.12 and

(2) gifts and other things of value accepted by the judge as permitted by RJC 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$250.

(3) For the purposes of (A)(1) and (2), "compensation" and "gifts and other things of value" shall not include the amount of any reimbursement of expenses and/or the value of any waiver of fees or charges permitted by RJC 3.14.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation and the description of any gift, loan, bequest, benefit, or other thing of value accepted.

(C) The public report required by paragraph (A) shall be made at least annually.

(D) Reports made in compliance with this Rule shall be filed as public records in the office of the clerk of the court on which the judge serves and in the Administrative Office of the Courts and, when technically feasible, posted by the court or office personnel on the court's website and on the website of the Administrative Office of the Courts. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] Judges should be mindful that other reporting requirements may be applicable, such as those required with regard to election campaigns. See Comment [8] to RJC 4.2.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the

Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

CANON 4. A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial

Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships

existing on, and conduct taken from July 1, 2012, forward.

In its order filed June 15, 2015, the Supreme Court provided: "On February 25, 2011, the Tennessee Bar Association filed a petition asking the Court to amend Rule 10, Rules of the Tennessee Supreme Court, and thereby adopt a revised Code of Judicial Conduct ("Code"). The TBA's petition included as exhibits the TBA's proposed revision of Rule 10 and related proposed amendments to other court rules. On March 11, 2011, the Court filed an order soliciting public comments on the TBA's petition and proposed rules amendments. After considering the written comments received during the public-comment period, the Court filed an order on January 4, 2012, granting the TBA's petition and adopting a revised Code of Judicial Conduct (and related rules amendments), effective July 1, 2012. The Court filed additional orders on June 13, 2012, June 26, 2012, and June 29, 2012, making modifications and corrections to the revised Code previously adopted on January 4, 2012. As modified and corrected, the revised Code of Judicial Conduct took effect on July 1, 2012."

"During the time the TBA was developing its proposed revision of the Code of Judicial Conduct, the Tennessee Judicial Conference and the Tennessee Trial Judges Association formed a Joint Committee ("Joint Committee") to review the TBA's draft revision of the Code. The Joint Committee submitted a report to the TBA's task force that was then drafting the proposed revision of the Code, and the Joint Committee issued a second report in the fall of 2011, during the public-comment period on the TBA's petition. In the fall of 2014, the Tennessee Judicial Conference reconstituted its prior committee to review the revised Code in light of experience over the two years since the revised Code was adopted and to make recommendations as to any proposed amendments to the revised Code."

"On June 8, 2015, the Tennessee Judicial Conference transmitted to Chief Justice Sharon G. Lee the Joint Committee's "Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct." The Supreme Court has decided to treat the Joint Committee's Report as a petition to amend Rule 10 (Code of Judicial Conduct) and to solicit public comments on the proposed amendments set out in the Report. Accordingly, the Court hereby solicits written comments regarding the Joint Committee's proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. A copy of the Joint Committee's Report is attached as an appendix to this Order. The deadline for submitting written comments is Friday, August 14, 2015. Written comments should be addressed to: James Hivner, Clerk, Re: Tenn. Sup. Ct. R. 10, 100 Supreme Court Building,

401 7th Avenue North, Nashville, TN 37219-1407, and should reference the docket number set out above [No. ADM2015-01092].

The proposed revisions as set forth in the Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct would amend Canon 4 by revising Rule 4.1(A)(3) to read: "a judge or judicial candidate shall not publicly endorse or publicly oppose a candidate for a nonjudicial public office."; revising Rule 4.1(A)(4) to read: "solicit funds for a political organization or another candidate for public office except that a judge or judicial candidate may make such a solicitation from a family member or domestic partner of the judge or judicial candidate and from a judge or judicial candidate of the same or higher judicial level."; revising Rule 4.2(B)(1) to expand the period for campaign activity from one hundred eighty days to nine months; and revising Rule 4.5(A) by adding the following language: "A judicial candidate, who is not a sitting judge, may not also run for a nonjudicial elective office, unless the judicial candidate, if a sitting judge, would be permitted by law to continue to hold judicial office."

Law Reviews. Judicial Elections, Judicial Impartiality and Legitimate Judicial Lawmaking: *Williams-Yulee v. The Florida Bar*, 68 Vand. L. Rev. En Banc 59 (2015).

Much Ado About Nothing: The Irrelevance of *Williams-Yulee v. The Florida Bar* on the Conduct of Judicial Elections, 68 Vand. L. Rev. En Banc 31 (2015).

Public Interest Lawyering & Judicial Politics: Four Cases Worth a Second Look in *Williams-Yulee v. The Florida Bar*, 68 Vand. L. Rev. En Banc 15 (2015).

The Absent Amicus: "With Friends Like These...", 68 Vand. L. Rev. En Banc 1 (2015).

The Jekyll and Hyde of First Amendment Limits on the Regulation of Judicial Campaign Speech, 68 Vand. L. Rev. En Banc 83 (2015).

What Do Judges Do All Day?: In Defense of Florida's Flat Ban on the Personal Solicitation of Campaign Contributions from Attorneys by Candidates for Judicial Office, 68 Vand. L. Rev. En Banc 99 (2015).

Williams-Yulee and the Inherent Value of Incremental Gains in Judicial Impartiality, 68 Vand. L. Rev. En Banc 43 (2015).

Williams-Yulee v. The Florida Bar, the First Amendment, and the Continuing Campaign to Delegitimize Judicial Elections, 68 Vand. L. Rev. En Banc 113 (2015).

Attorney General Opinions. Constitutionality of judges' receiving compensation for performing marriage ceremonies, OAG 84-286 (10/25/84).

A general sessions judge must resign from office upon becoming a candidate for district attorney general, OAG 06-049 (3/16/06).

Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General.

(A) Except as permitted by law, or by RJC's 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

- (1) act as a leader in, or hold an office in, a political organization;
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate for public office except that a judge or judicial candidate may solicit funds for a political organization or candidate for public office from a member of the judge's family or a member of the judicial candidate's family;
- (5) [intentionally omitted];
- (6) [intentionally omitted];
- (7) [intentionally omitted];
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;
- (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A). [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed June 26, 2012, effective July 1, 2012; and amended by order filed and effective December 2, 2015.]

Comment. General Considerations

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candi-

date, this Canon becomes applicable to his or her conduct. Additionally, the Rules of Professional Conduct applicable to lawyers provide that "[a] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct." Tenn. Sup. Ct. R. 8, RPC 8.2(b).

Participation in Political Activities

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit

judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. *See* Rule 1.3. These Rules do not prohibit judges and judicial candidates from campaigning on their own behalf or from endorsing or opposing judges or judicial candidates in a partisan, nonpartisan, or retention election for judicial office. *See* Rules 4.2(B)(2), 4.2(C)(4), and 4.2(D).

[4A] A judge's or a judicial candidate's attendance at a dinner or other event sponsored by a political organization or a candidate for public office does not, by itself, constitute a public endorsement of a candidate for purposes of (A)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

[6A] Paragraph (A)(4) prohibits judges and judicial candidates from soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate for public office, but the rule does not prohibit a judge or judicial candidate from making contributions to his or her own election campaign. Additionally, paragraph (A)(4) allows a judge or judicial candidate to solicit funds for a political organization or candidate for public office from a member of the judge's family or a member of the judicial candidate's family.

[6B] RJC 4.1(A)(10) prohibits a judge from using court staff in a campaign for judicial office. The rule does not preclude voluntary involvement of court staff in campaign activities during non-working hours.

Statements and Comments Made During a Campaign for Judicial Office

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Para-

graph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in RJC 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases;

instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive ques-

tionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. *See* RJC 2.11.

Rule 4.2 Political and Campaign Activities of Judges and Judicial Candidates in Public Elections.

(A) A judge or judicial candidate in a partisan, nonpartisan, or retention election shall:

- (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;
- (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by RJC 4.4, before their dissemination; and
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in RJC 4.4, that the candidate is prohibited from doing by RJC 4.1.

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than 365 days before the first applicable primary election, caucus, or general or retention election:

- (1) establish a campaign committee pursuant to the provisions of RJC 4.4.
- (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;
- (3) [Intentionally omitted];
- (4) [Intentionally omitted];
- (5) seek, accept, or use endorsements from any person or organization; and
- (6) [Intentionally omitted].

(C) A judge or judicial candidate may, except as prohibited by law, at any time

- (1) purchase tickets for and attend political gatherings, subject to the limitations in (C)(3);
- (2) identify himself or herself as a member of a political party;

(3) contribute to a political organization or a political candidate in an amount up to the limitations provided in Tenn. Code Ann. § 2-10-301 et seq.; and

(4) publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office.

(D) Judges and judicial candidates running for judicial office in a partisan, nonpartisan, or retention election may group themselves into slates or other alliances to conduct their campaigns more effectively, including the establishment of a joint campaign committee pursuant to RJC 4.4. [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed June 29, 2012, effective July 1, 2012; and amended by order filed and effective December 2, 2015.]

Comment.

[1] Paragraphs (B), (C), and (D) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by RJC 4.1.

[1A] It is possible for some judicial offices to be subject to a primary and general election. It is possible for some counties to have a partisan primary for a particular office whereas another county might only have a nonpartisan general election for the same office. It is also conceivable that the decision as to whether or not to hold a primary might not be made until within the 365-day period before the primary. Therefore, for the sake of uniformity, the 365-day period for all judicial offices that can possibly be subject to a primary election, whether or not there actually is a primary, shall begin to run from the date the primary would be held.

[2] Paragraph (C) provides a limited exception to the restrictions imposed by RJC 4.1 and permits judges or judicial candidates at any time to be involved in limited political activity. Note that paragraph (C) is equally applicable to judges or judicial candidates subject to partisan, nonpartisan, and retention elections. Paragraph (C)(3) allows a judge or judicial candidate to contribute to a political organization or candidate in an amount not to exceed the contribution limits provided in Tenn. Code Ann. § 2-10-301 et seq. This limitation includes the purchase of tickets set out in Paragraph (C)(1).

[2A] Paragraph (C)(4) allows a judge or judicial candidate to “publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office.” The term “judicial office” refers only to an elected judgeship; paragraph (C)(4) does not allow a judge or judicial candidate to pub-

licly endorse or oppose candidates for other elected (non-judge) positions within the judicial system, such as elected court clerks, district attorneys general, and district public defenders.

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] [Intentionally omitted]

[5] [Intentionally omitted]

[6] [Intentionally omitted]

[7] [Intentionally omitted]

[7A] Paragraph (D) provides that judges and judicial candidates running for judicial office in partisan, nonpartisan, or retention elections may group themselves into slates or other alliances to conduct their campaigns more effectively.

[8] Compliance with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction includes, but is not limited to, the provisions of Tennessee Code Annotated sections 2-10-101 et seq., the Campaign Financial Disclosure Act, and Tennessee Code Annotated sections 2-10-301 et seq., the Campaign Contribution Limits Act.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 4.3 Activities of Candidates for Appointive Judicial Office. A candidate for appointment to judicial office may:

- (A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and
- (B) seek endorsements for the appointment from any person or organization. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Comment.

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. *See* RJC 4.1 (A)(13).

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 4.4 Campaign Committees.

- (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.
- (B) A judicial candidate subject to public election shall direct his or her campaign committee:
 - (1) to solicit and accept only such campaign contributions allowable by law.
 - (2) not to solicit or accept contributions for a candidate's current campaign more than 365 days before an election (*see* RJC 4.2 Comment [1A] as to the calculation of this time period), nor more than ninety (90) days after the last election in which the candidate participates; and
 - (3) to comply with all applicable requirements for disclosure and divestiture of campaign contributions as required by law. [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed June 26, 2012, effective July 1, 2012; and amended by order filed and effective December 2, 2015.]

Comment.

- [1] Judges and judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. *See* RJC 4.1(A)(8).
- [2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.
- [3] [Intentionally omitted]
- [4] RJC 4.2(D) provides that judges and judicial candidates who are running for judicial office in a partisan, nonpartisan, or retention election may "group themselves into slates or other alliances to conduct their campaigns

more effectively, including the establishment of a joint campaign committee pursuant to RJC 4.4." In such circumstances, and to the extent permitted by other law, the joint campaign committee may solicit and accept campaign contributions, manage the expenditure of campaign funds (including the establishment of a joint campaign bank account), and generally conduct a joint campaign on behalf of the group of aligned judges and judicial candidates.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 4.5 Judges and Judicial Candidates Seeking Nonjudicial Office.

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

(C) No judicial candidate may also simultaneously be a candidate for an elected nonjudicial position. [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed and effective December 2, 2015.]

Comment.

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate. For the same reasons, paragraph (C) precludes a person who is not already a judge from simultaneously being

a candidate for an elected judicial position and an elected nonjudicial position.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

Compiler’s Notes. In its order filed January 4, 2012, the Supreme Court provided that the Court hereby adopts a revised Code of Judicial Conduct, effective July 1, 2012. The revised Tenn. Sup. Ct. R. 10 shall have prospective application only, applying to all relationships existing on, and conduct taken from July 1, 2012, forward.

Rule 10A. Judicial Ethics Opinions.

Section 10A.1.

(a) There is hereby created a committee which shall be known as the judicial ethics committee to consist of seven (7) members appointed by this court as follows:

- One (1) judge from the Court of Appeals or Court of Criminal Appeals;
- One (1) trial judge from each grand division of the state;
- One (1) general sessions judge licensed to practice law in this state;
- One (1) juvenile court judge licensed to practice law in this state; and
- One (1) municipal court judge licensed to practice law in this state.

(b) The committee shall select its own chair.

(c) Each member shall serve for a term of four (4) years. Vacancies on the committee for an unexpired term shall be filled for the remainder of the term. (Adopted by order filed April 25, 2006, and effective July 1, 2006; as amended by order filed October 31, 2006.)

Section 10A.2. The committee shall act under the rules it may from time to time promulgate, but shall act only with the concurrence of three (3) or more members. (Adopted by order filed April 25, 2006, and effective July 1, 2006.)

Section 10A.3. Members of the committee shall receive no compensation for their services but may be reimbursed by the Administrative Office of the Courts for their travel and other expenses incidental to the performance of their duties. (Adopted by order filed April 25, 2006, and effective July 1, 2006.)

Section 10A.4. The committee shall exercise the powers and perform the ordinary and necessary duties usually carried out by judicial ethics advisory bodies. By the concurrence of a majority of its members it shall issue Formal Ethics Opinions on proper professional conduct when requested to do so by a judge who is governed by the Code of Judicial Conduct, except that an opinion may not be issued in a matter that is the subject of a pending disciplinary proceeding. Formal Ethics Opinions shall be filed by the committee in the Administrative Office of the Courts. Said office shall distribute a copy of such opinions to all judges governed by the Code of Judicial Conduct or see that such opinions are published in a publication generally available to judges. (Adopted by order filed April 25, 2006, and effective July 1, 2006.)

Section 10A.5. Requests for Formal Ethics Opinions shall be addressed to the committee in writing, stating the factual situation in detail, accompanied by a short brief or memorandum citing the Canons of the Code of Judicial Conduct involved and any other pertinent authorities and shall contain a certificate with the opinion that the matter is not the subject of a pending disciplinary proceeding. (Adopted by order filed April 25, 2006, and effective July 1, 2006.)

Section 10A.6. A Formal Ethics Opinion shall constitute a body of principles and objectives upon which judges can rely for guidance. (Adopted by order filed April 25, 2006, and effective July 1, 2006.)

Rule 10B. Disqualification or Recusal of a Judge; Filing and Disposition of Motions and Appeal The procedures set out in this rule shall be employed to determine whether a judge should preside over a case. [As adopted by order filed January 4, 2012, effective July 1, 2012; amended by order filed November 22, 2016, effective January 1, 2017.]

Compiler's Notes. In its order filed November 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

In its order filed November 22, 2016, the Supreme Court provided that: "On June 23, 2016, the Court filed an order soliciting written comments concerning proposed amendments to Rule 10B, Rules of the Tennessee Supreme Court, which governs the procedures for seek-

ing disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge, justice, or other judicial officer. The public-comment period expired on September 21, 2016.

"On September 21, 2016, the "Comment of the Tennessee Bar Association" ("Comment") was filed. (The TBA's Comment was the only written comment received by the Court during the public-comment period.) In summary, the Comment states that the TBA supports the following proposed amendments: (1) making jurisdictional the time periods for filing the various documents specified in Rule 10B, Sections 2 and 3; (2) setting a uniform time period (twenty-one days) for filing the various documents specified in Sections 2 and 3; (3) providing that a motion for court review is to be determined by "three other judges of the intermediate court" (deleting the requirement that the reviewing judges be "in that section of the court"); and (4) making a number of non-sub-

stantive formatting changes to both the rule and the existing Explanatory Comments. The TBA, however, suggested modifications to the proposed amendments relating to motions for court review filed pursuant to Sections 3.02 and 3.03.”

“After due consideration of the proposed amendments set out in the public-comment order, as well as the TBA’s Comment regarding the proposed amendments, the Court has de-

cided to adopt the amendments set out in the Appendix to this order. These amendments include modifications addressing the TBA’s comments about the appellate courts’ handling of motions for court review.”

“Accordingly, the Court hereby adopts the amendments set out in the Appendix to this order. The amendments shall take effect on January 1, 2017.”

NOTES TO DECISIONS

1. Recusal Appropriate.

Trial judge should have recused himself and retroactive recusal was warranted as his impartiality might have reasonably been questioned because the gist of the judge’s comments was that the judge blamed one of the attorney’s for the court’s exposure to negative publicity, possibly drawing the scrutiny of the judge’s family and friends, that the judge did not like

that, and that the judge’s day would come; and a reasonable person would have construed the remarks as indicating that the judge might have sought retribution against the attorney for a perceived wrongdoing unrelated to the contempt charges against the attorney. *Chase v. Stewart*, — S.W.3d —, 2021 Tenn. App. LEXIS 42 (Tenn. Ct. App. Feb. 5, 2021).

Section 1. Motion Seeking Disqualification or Recusal of Trial Judge of Court of Record.

1.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge of a court of record, or a judge acting as a court of record, shall do so by a written motion filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal. The motion shall be filed no later than ten days before trial, absent a showing of good cause which must be supported by an affidavit. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this rule. [Amended by order filed November 22, 2016, effective January 1, 2017; amended by order filed May 4, 2020, effective immediately.]

Compiler’s Notes. By order dated May 4, 2020, the Supreme Court provided that: “On March 30, 2020, this Court entered an order soliciting written comments on a proposed amendment to Tennessee Supreme Court Rule 10B, section 1, as it pertains to the timeliness of a filed motion for recusal or disqualification. During the comment period, the Court received comments from the Tennessee Bar Association,

the Knoxville Bar Association, and Elliott J. Schuchardt, Esq.

“After due consideration, the Court hereby adopts the amendment to Tennessee Supreme Court Rule 10B, section 1, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

NOTES TO DECISIONS

ANALYSIS

1. Waiver.
2. Affidavit.
3. Recusal Properly Denied.
4. Evidence.
5. Compliance.
7. Appeal.
8. Recusal Appropriate.

1. Waiver.

Any claims regarding judicial bias and recusal were waived; petitioner never filed a motion seeking disqualification or recusal of the trial court and petitioner did not raise the issue until he filed his petition for post-conviction relief, but even then, he claimed only that the trial court had made an inappropriate comment and did not argue that the trial court should have recused itself. *Phillips v. State*, — S.W.3d —, 2018 Tenn. Crim. App. LEXIS 703 (Tenn. Crim. App. Sept. 17, 2018), review denied and ordered not published, — S.W.3d —, 2019 Tenn. LEXIS 34 (Tenn. Feb. 21, 2019).

Because defendant waited over 14 months from the filing of his petition before seeking recusal based on the post-conviction judge's behavior and comments prior to his trial, he waived that issue on appeal. *Anderson v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 238 (Tenn. Crim. App. Apr. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 373 (Tenn. Aug. 11, 2020).

2. Affidavit.

Because a husband failed to comply with the rule by not attaching an affidavit that verified the specific factual grounds supporting disqualification, the trial judge would have been justified to deny the motion summarily without a hearing. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Wife's motion for recusal was not defective on its face where it was apparent from the substance of the disputed affidavits that they were based on the personal knowledge of the affiants. *Ueber v. Ueber*, — S.W.3d —, 2019 Tenn. App. LEXIS 56 (Tenn. Ct. App. Jan. 31, 2019).

Contrary to the trial court's conclusion, a mother had submitted affidavit in support of her motion for recusal where the motion included a statement that was sworn to before a notary public. *Dye v. Dye*, — S.W.3d —, 2019 Tenn. App. LEXIS 607 (Tenn. Ct. App. Dec. 18, 2019).

Petitioner was not entitled to relief on his claim that the postconviction should have recused himself because the motion to recuse was procedurally deficient as it was not supported by an affidavit as required. *Gibson v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 129 (Tenn. Crim. App. Feb. 26, 2019), appeal de-

nied, — S.W.3d —, 2019 Tenn. LEXIS 317 (Tenn. July 18, 2019).

Appellant failed to come forward with any evidence that would give a person of ordinary prudence a reasonable basis for questioning the chancellor's impartiality and thus the denial of her motion to recuse was affirmed; although appellant came forward with her own affidavit and included the chancery court's order granting an in limine motion, nothing supplied a basis for questioning the chancellor's impartiality and she did not claim she was not provided the opportunity to be heard or that any communications by appellee were outside the record. *Lee v. Lee*, — S.W.3d —, 2019 Tenn. App. LEXIS 276 (Tenn. Ct. App. May 31, 2019).

Six week delay did not render a wife's motion to recuse the trial judge untimely because the record did not demonstrate that the wife's decision to hold the recusal motion was experimental or strategic; although the wife waited until the trial court had ruled on some of the husband's motions before bringing the recusal motion to the trial court's attention, she generally agreed to the husband's requests. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS 302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

Best practice was to proceed to consider the issues in a case notwithstanding a wife's failure to strictly comply with the rule because her motion to recuse the trial judge was based on personal knowledge; the affidavit and the recusal motion both readily revealed that the wife's allegations were based on hearings where she was present and orders to which she was a party, and her affidavit specifically stated that the facts contained in her motion and appeal were based on personal knowledge. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS 302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

3. Recusal Properly Denied.

Trial court properly denied a husband's motion for recusal because the contention that the trial judge showed bias by refusing to allow the husband to testify in support of his motion for recusal was not sufficient, standing alone, to justify recusal. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Trial court properly denied a husband's motion for recusal because the husband failed to identify any factual basis to support his suspicion or unfounded belief that the trial judge knew or even suspected that he had made a decision that adversely affected the trial judge's application for a loan; the facts upon which the husband relied were simply insufficient to

cause the trial judge or reasonable person to question the impartiality of the judge or the integrity of the judicial system. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Wife's motion to recuse the judge from the divorce proceedings was properly denied where she presented no evidence that the judge was actually unfairly biased, reached a prejudged conclusion because of alleged bias, or entered any ruling detrimental to the wife due to alleged bias, the wife's claim of gender bias was rejected where she failed to specify in what way the judge ignored the husband's conduct to her detriment, the bias claims related to the ruling on attorney's fees were rejected as she failed to request a trial by jury, and there were no allegations that the credibility decisions were based on anything other than the evidence presented in court, and the judge's remarks did not support a bias or partiality challenge where the statements were made after several warning that were continually ignored by the wife. *Ueber v. Ueber*, — S.W.3d —, 2019 Tenn. App. LEXIS 56 (Tenn. Ct. App. Jan. 31, 2019).

Trial court properly denied motion to disqualify because the motion was deficient, specifically contravening the rule; no affidavit or declaration was attached to the motion, and there was no statement that the motion was not being presented for any improper purpose. *Nationwide Invs., LLC v. Pinnacle Bank*, — S.W.3d —, 2019 Tenn. App. LEXIS 458 (Tenn. Ct. App. Sept. 16, 2019), appeal denied, *Nationwide Invs. LLC v. Pinnacle Bank*, — S.W.3d —, 2020 Tenn. LEXIS 131 (Tenn. Feb. 19, 2020).

Trial court did not err by denying appellant's motion for recusal under Tenn. Sup. Ct. R. 10B based on its denial of the motion for sanctions because appellant's delay of more than four months between the trial court's ruling on the motion for sanctions and the filing of the motion for recusal was neither prompt nor timely. *Xingkui Guo v. Rogers*, — S.W.3d —, 2020 Tenn. App. LEXIS 514 (Tenn. Ct. App. Nov. 18, 2020).

Trial court did not err by denying appellant's motion for recusal based on its adjudication of appellant's motion to revise because he did not meet his burden of proof, as he failed to provide any substantive evidence from which the court might have concluded that the trial court showed prejudice of a personal character directed at appellant. *Xingkui Guo v. Rogers*, — S.W.3d —, 2020 Tenn. App. LEXIS 514 (Tenn. Ct. App. Nov. 18, 2020).

4. Evidence.

Insofar as an appellant argued that a trial court erred in granting an order of protection based on judicial bias, the argument was without merit because the appellant provided no extrajudicial basis for the trial court judge to have been biased against the appellant. Although the appellant delineated a long list of

purportedly biased actions that were primarily comprised of rulings against the appellant or procedural delays, the adverse rulings did not provide grounds for recusal in light of the adversarial nature of litigation. *Gibson v. Bikas*, 556 S.W.3d 796, 2018 Tenn. App. LEXIS 110 (Tenn. Ct. App. Feb. 28, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 421 (Tenn. July 18, 2018).

5. Compliance.

Appellate court declined to hear a judgment creditor's judicial bias claim because the judgment creditor (1) filed no motion for recusal, and (2) did not raise recusal in an appellate brief. *Smith v. Smith*, — S.W.3d —, 2019 Tenn. App. LEXIS 59 (Tenn. Ct. App. Jan. 31, 2019).

Circuit court properly denied a plaintiff's pro se motion for recusal because the judge determined that there was not an objectively reasonable basis for questioning his impartiality, the motion failed to comply with the procedural rules since it was not signed under oath or penalty of perjury and was not supported with an affidavit or a copy of the affidavit. *Burgess v. Bradford Hills HOA*, — S.W.3d —, 2020 Tenn. App. LEXIS 478 (Tenn. Ct. App. Oct. 28, 2020).

7. Appeal.

Dismissal of parent's petition for recusal appeal was appropriate because the parent's objection to hearing before appointed special judges was insufficient for review so that the parent's claim for recusal contained in the motion was waived. Furthermore, the appellate court lacked jurisdiction to consider the petition because the parent failed to file the petition for an accelerated interlocutory appeal within twenty-one days of the date of entry of the order denying recusal. *Hastings v. Hastings*, — S.W.3d —, 2020 Tenn. App. LEXIS 353 (Tenn. Ct. App. Aug. 6, 2020).

8. Recusal Appropriate.

Recusal of post-conviction judge was obligated, even though defendant did not file a motion for recusal, because there was a reasonable basis for questioning the judge's impartiality based on comments which the judge made at the conclusion of the hearing when denying defendant post-conviction relief as the judge's statements communicated the judge's belief that defendant's trial counsel, whom the judge highly regarded, could never have been ineffective and expressed disdain for the proceedings which the judge was charged with conducting. *Cook v. State*, 606 S.W.3d 247, 2020 Tenn. LEXIS 294 (Tenn. Aug. 25, 2020).

Recusal was appropriate when a trial court stated, for the first time, in response to a motion for recusal, its reasons for granting a motion for a new trial several months earlier. By granting the motion for a new trial without explanation, the trial court was presumed to have weighed the evidence and found the jury's

verdict to be against the weight of the evidence so that the judge's failing to disqualify the judge constituted grounds for recusal as a reasonable basis for questioning the judge's impartiality was created. *Buckley v. Elephant Sanctuary Tenn. Inc.*, — S.W.3d —, 2020 Tenn. App. LEXIS 315 (Tenn. Ct. App. July 14, 2020).

Trial judge should have recused himself and retroactive recusal was warranted as his impartiality might have reasonably been questioned because the gist of the judge's comments was that the judge blamed one of the attorney's

for the court's exposure to negative publicity, possibly drawing the scrutiny of the judge's family and friends, that the judge did not like that, and that the judge's day would come; and a reasonable person would have construed the remarks as indicating that the judge might have sought retribution against the attorney for a perceived wrongdoing unrelated to the contempt charges against the attorney. *Chase v. Stewart*, — S.W.3d —, 2021 Tenn. App. LEXIS 42 (Tenn. Ct. App. Feb. 5, 2021).

1.02. While the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

NOTES TO DECISIONS

1. Pending Motion.

Trial court did not err by denying appellant's motion for recusal based on his allegations that it violated this section because the trial court made its substantive decision on the motion on July 10, 2020, which was nine days before appellant filed his motion to recuse, the trial

court's electronic signing and filing of the order on August 6, 2020 was purely administrative, and these acts were not in violation of this section. *Xingkui Guo v. Rogers*, — S.W.3d —, 2020 Tenn. App. LEXIS 514 (Tenn. Ct. App. Nov. 18, 2020).

1.03. Upon the filing of a motion pursuant to section 1.01, the judge shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion.

NOTES TO DECISIONS

ANALYSIS

- 1. Recusal Properly Denied.
- 2. Procedure.

1. Recusal Properly Denied.

Trial judge fulfilled his duty because he stated that he had no knowledge of the facts or circumstances upon which a husband relied in seeking the judge's recusal; the statements the judge made from the bench and in the order denying the motion to recuse did not require recusal because the judge's response had no bearing on the substantive issues in the parties' divorce, only the motion for recusal. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).

Trial court did not err by denying appellant's motion for recusal based on his allegations that it violated this section because the court could not conclude that the time between the filing of the motion and the hearing was excessive, as appellant filed his motion for recusal on July 19, 2020, the trial court heard the motion on September 4, 2020 and entered its order denying the motion on the same day. Although the delay between the filing of the motion and the

hearing on same is not specifically explained in our record, the court took judicial notice of the fact that there have been delays in all Tennessee courts due to the coronavirus pandemic and the Tennessee Supreme Court orders precluding in-person hearings at certain points during 2020. *Xingkui Guo v. Rogers*, — S.W.3d —, 2020 Tenn. App. LEXIS 514 (Tenn. Ct. App. Nov. 18, 2020).

2. Procedure.

Written order comported with the requirements of the rule; the trial court did not err in adopting the order prepared by counsel as its own, as there was no indication that the trial court did not review the order to ensure that it reflected its ruling and findings as announced on the record, and the trial court's incorporation by reference of the oral findings made at the hearing into the written order was sufficient to meet the rule's requirements. *Harcrow v. Harcrow*, — S.W.3d —, 2019 Tenn. App. LEXIS 155 (Tenn. Ct. App. Mar. 27, 2019).

Trial court's order denying a wife's motion to recuse in a divorce case did not comply with Tenn. Sup. Ct. R. 10B, § 1.03, because the order did not state the grounds upon which the

motion was denied. While oral findings may be incorporated into the written order to satisfy the rule, the order contained no such incorporation and, even if it had, the judge's oral findings were insufficient. *Winder v. Winder*, — S.W.3d —, 2019 Tenn. App. LEXIS 473 (Tenn. Ct. App. Sept. 25, 2019).

In a case involving modification of a parenting plan in which the father sought a motion to recuse the trial judge, the trial court's order did not sufficiently comply with this rule because it did not make specific findings as to the judge's

reasoning for denying the motion to recuse regarding the text allegedly sent by the trial court's clerk while the father was testifying; and the trial court failed to make any findings whatsoever about the allegations that the clerk had an affiliation with a school, which was particularly relevant given that the major dispute in the case involved whether the minor children would attend the school or not. *Dougherty v. Dougherty*, — S.W.3d —, 2020 Tenn. App. LEXIS 104 (Tenn. Ct. App. Mar. 12, 2020).

1.04. Designation Procedure. A judge who recuses himself or herself, whether on the judge's own initiative or on motion of a party, shall not participate in selecting his or her successor, absent the agreement of all parties. With the agreement of all parties to the case, the judge may seek an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(1). Otherwise, the presiding judge of the court shall effect an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(2) and/or (3), in sequential order. If the presiding judge is the recused judge, the presiding judge shall take no action in selecting a successor. In such cases, the presiding judge pro tempore of the court shall effect an interchange in accordance with Tenn. Sup. Ct. R. 11, § VII(c)(2) or (3). If an interchange cannot be effected by following the above procedure in sequential order, the presiding judge or the presiding judge pro tempore shall request—by using the designation form appended to this rule—the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4). In a judicial district where the presiding judge is the only judge and he or she recuses himself or herself, the judge shall skip the sequential steps set forth in Tenn. Sup. Ct. R. 11, § VII(c)(2) and (3) and instead request the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4), using the designation request form. Similarly, if the recusing judge is a general sessions judge or juvenile court judge, and he or she is the only general sessions or juvenile court judge in that county, the judge shall skip the sequential steps set forth in Tenn. Sup. Ct. R. 11, § VII(c)(2) and (3) and instead request the designation of a judge by the Chief Justice, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(4), using the designation request form. Special permission to skip the sequential steps may be granted by the Chief Justice for good cause shown. [As adopted by order filed January 4, 2012, effective July 1, 2012; and amended by order filed June 13, 2012, effective July 1, 2012; amended by order filed November 22, 2016, effective January 1, 2017; amended by order filed and effective November 1, 2018.]

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules

set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

In its order filed November 1, 2018, the Supreme Court provided "On September 25, 2018, the Court filed an order soliciting public comments on proposed amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court. The deadline for submitting

written comments was October 26, 2018. The Court received only one written comment during the comment period, a comment from the Tennessee Bar Association supporting the proposed amendments.

“After due consideration, the Court hereby

adopts the amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

NOTES TO DECISIONS

1. Appeal.

In a divorce, a father’s motion for recusal, alleging: (1) the trial judge, while practicing law, and the judge’s associate at the time met with the mother for approximately one hour each to discuss possible representation in a divorce, which representation did not occur; and (2) the judge had represented the father’s paramour, who was, allegedly, a significant participant in the case, was properly denied because no evidence demonstrated that these prior involvements resulted in any personal bias on the part of the judge, nor did the judge’s rulings. *Duke v. Duke*, 398 S.W.3d 665, 2012 Tenn. App. LEXIS 704 (Tenn. Ct. App. Oct. 2, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 225 (Tenn. Feb. 26, 2013).

When, in a divorce, after a father did not appeal a trial court’s denial of the father’s motion for recusal, *Tenn. Sup. Ct. R. 10B* was amended, and the father again moved for recusal, asserting the same grounds, which was denied, an appeal of that denial was heard, to the extent the grounds alleged for recusal persisted, because the Rule’s interim amendment gave the trial court less discretion to deny the motion and gave an appellate court a less deferential standard of review, so it did not appear that the father was engaged in impermissible strategic conduct. *Duke v. Duke*, 398 S.W.3d 665, 2012 Tenn. App. LEXIS 704 (Tenn. Ct. App. Oct. 2, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 225 (Tenn. Feb. 26, 2013).

Section 2. Appeal From Trial Court’s Denial of Disqualification or Recusal Motion.

2.01. If the trial court judge enters an order denying a motion for the judge’s disqualification or recusal, or for determination of constitutional or statutory incompetence, the trial court’s ruling either can be appealed in an accelerated interlocutory appeal as of right, as provided in this section 2, or the ruling can be raised as an issue in an appeal as of right, see *Tenn. R. App. P. 3*, following the entry of the trial court’s judgment. These two alternative methods of appeal — the accelerated interlocutory appeal or an appeal as of right following entry of the trial court’s judgment — shall be the exclusive methods for seeking appellate review of any issue concerning the trial court’s denial of a motion filed pursuant to this rule. In both types of appeals authorized in this section, the trial court’s ruling on the motion for disqualification or recusal shall be reviewed by the appellate court under a *de novo* standard of review, and any order or opinion issued by the appellate court should state with particularity the basis for its ruling on the recusal issue. [Amended by order filed November 22, 2016, effective January 1, 2017.]

Workers’ Compensation Appeals Board Decisions. A pro se employee filed a notice of appeal indicating he was appealing the trial court’s order denying his motion for recusal. The notice of appeal stated that the judge was citing “wrongful/codes laws” that did not apply to the issues raised for the purpose of aiding the employer; that the judge was allowing “unskilled doctors” who could not “treat or properly diagnose” the employee; that the judge was “tampering [with] and concealing orders . . . to

prevent [the employee]” from obtaining “his rightful relief”; and that the judge “has been automatically disqualified.” Neither party timely filed a brief on appeal. Having carefully reviewed and considered the record, and having noted that the employee presented no evidence to the trial court to support his positions and no argument on appeal addressing how the trial court allegedly erred in denying his motion for recusal, the Board affirmed the trial court’s order denying the employee’s motion for recu-

sal. Hayes v. Elmington Property Management, 2020 TN Wrk Comp App Bd LEXIS 17.

NOTES TO DECISIONS

ANALYSIS

1. Recusal Properly Denied.
2. Appeal.
3. Mootness.
4. Recusal Appropriate.
5. Orders After Recusal.

1. Recusal Properly Denied.

Trial court properly denied a husband's motion to recuse because (1) the motion was based on adverse rulings, (2) the lack of a transcript made it impossible to evaluate allegations of partiality and "false" factual findings, and (3) the husband showed no personal bias or prejudice of an extrajudicial nature. Purswani v. Purswani, 585 S.W.3d 907, 2019 Tenn. App. LEXIS 147 (Tenn. Ct. App. Mar. 26, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 415 (Tenn. Aug. 14, 2019).

Husband has not met the burden of showing grounds for recusal where some of Husband's arguments relating to the chancellor's impartiality were actually thinly veiled attacks on the merits of the court's decision in a contempt action, the husband cited no evidence showing that the wife's attorney had been given leeway in his submissions to the trial court, and there was no evidence to show that the chancellor had an interest in the outcome of the case. Foster v. Foster, — S.W.3d —, 2019 Tenn. App. LEXIS 214 (Tenn. Ct. App. May 2, 2019).

Trial court did not err in denying a former husband's motion for recusal because the record contained insufficient evidence of bias; the trial court did not make a specific ruling regarding an expert's testimony because it merely stated the applicable law by opining that although the former wife could choose her medical doctors and treatments, the necessity of the treatments would be relevant to her spousal support claim and reserved ruling on the experts' credibility until it heard the proof. Neamtu v. Neamtu, — S.W.3d —, 2019 Tenn. App. LEXIS 332 (Tenn. Ct. App. July 2, 2019).

Trial court did not err in denying a former husband's motion for recusal because the record contained insufficient evidence of bias; at no point in its order or statements from the bench did the trial court state an intention to rule against the former husband because it simply afforded the former husband an opportunity to negotiate with the former wife by revealing its initial thinking and advising the parties to discuss a possible resolution. Neamtu v. Neamtu, — S.W.3d —, 2019 Tenn. App. LEXIS 332 (Tenn. Ct. App. July 2, 2019).

Mere allegations of bias and perceived bias contained in a wife's motion to recuse and

affidavit were insufficient to require the trial judge to recuse himself because the wife's allegations were unsupported by any evidence that would cause either the trial judge or a reasonable person in his position to question his impartiality or the integrity of the judicial system; the trial court specifically rebutted the wife's allegation. Winder v. Winder, — S.W.3d —, 2019 Tenn. App. LEXIS 561 (Tenn. Ct. App. Nov. 18, 2019).

Plaintiffs filed their motion to recuse the day before the scheduled hearing, and the motion was not supported by an affidavit and was filed by a firm previously disqualified by the trial court; the trial court did not err in denying the recusal motion. Diemoz v. Huneycutt, — S.W.3d —, 2020 Tenn. App. LEXIS 204 (Tenn. Ct. App. May 6, 2020).

Denial of a motion for recusal in a will contest was appropriate because any knowledge of the trial court judge pertaining to the preparation of deeds while in private practice was not relevant to the ultimate question before the judge of whether the will was a product of undue influence, the challenger's threatened litigation against the trial court judge did not show that the judge had an interest in the outcome of the proceeding, and comments that were made by the trial court judge were not indicative of his bias or prejudice. In re Estate of Dorning, — S.W.3d —, 2020 Tenn. App. LEXIS 294 (Tenn. Ct. App. June 25, 2020).

Denial of a motion for disqualification of a judge in a legal malpractice action was appropriate because the chancellor—who had presided in the underlying class action that was brought by the client—was not likely be a material witness in the litigation. There was no need for the chancellor to testify because the jury was not in a position to make the determination of whether any alleged settlements would have been approved in the underlying litigation as that question was for the court, not the jurors as factfinders. Hawthorne v. Morgan & Morgan Nashville PLLC, — S.W.3d —, 2020 Tenn. App. LEXIS 576 (Tenn. Ct. App. Dec. 17, 2020).

2. Appeal.

An appellate court will review a trial court's ruling on a motion for recusal under a de novo standard of review. Young v. Dickson, — S.W.3d —, 2019 Tenn. App. LEXIS 433 (Tenn. Ct. App. Sept. 3, 2019).

In a divorce action, the husband waived his right to challenge the chancellor's impartiality based on the events stemming from a hearing or the court's ruling following the hearing, because the husband's motion for recusal or

disqualification came 14 months after the hearing and over seven months after the court’s order. *Renner v. Renner*, — S.W.3d —, 2019 Tenn. App. LEXIS 628 (Tenn. Ct. App. Dec. 27, 2019).

Although the absence of the specific motion for recusal addressed by the trial court from the appellate submission amounted to noncompliance with the requirements—when a Substituted Motion to Recuse that was filed in the trial court nearly two weeks after the trial judge entered the order denying the recusal request instead was included—the appellate court proceeded to address the substance of the challenger’s articulated grievances. In *re Estate of Dorning*, — S.W.3d —, 2020 Tenn. App. LEXIS 294 (Tenn. Ct. App. June 25, 2020).

3. Mootness.

Trial judge did not err in concluding that a husband’s first motion for recusal was moot where, at the time the motion was filed, there was no matter pending before the court. *Foster v. Foster*, — S.W.3d —, 2019 Tenn. App. LEXIS 214 (Tenn. Ct. App. May 2, 2019).

4. Recusal Appropriate.

Recusal of post-conviction judge was obligated, even though defendant did not file a motion for recusal, because there was a reasonable basis for questioning the judge’s impartiality based on comments which the judge made at the conclusion of the hearing when denying defendant post-conviction relief as the judge’s

statements communicated the judge’s belief that defendant’s trial counsel, whom the judge highly regarded, could never have been ineffective and expressed disdain for the proceedings which the judge was charged with conducting. *Cook v. State*, 606 S.W.3d 247, 2020 Tenn. LEXIS 294 (Tenn. Aug. 25, 2020).

Trial judge should have recused himself and retroactive recusal was warranted as his impartiality might have reasonably been questioned because the gist of the judge’s comments was that the judge blamed one of the attorney’s for the court’s exposure to negative publicity, possibly drawing the scrutiny of the judge’s family and friends, that the judge did not like that, and that the judge’s day would come; and a reasonable person would have construed the remarks as indicating that the judge might have sought retribution against the attorney for a perceived wrongdoing unrelated to the contempt charges against the attorney. *Chase v. Stewart*, — S.W.3d —, 2021 Tenn. App. LEXIS 42 (Tenn. Ct. App. Feb. 5, 2021).

5. Orders After Recusal.

Trial court erred in ordering the father to pay for trial transcripts where that order was made within the same order in which the trial court found that grounds for recusal existed. Once the trial court had determined that recusal was warranted, it should have entered an order doing just that and nothing more. *Dougherty v. Dougherty*, — S.W.3d —, 2020 Tenn. App. LEXIS 565 (Tenn. Ct. App. Dec. 14, 2020).

2.02. To effect an accelerated interlocutory appeal as of right from the denial of a motion for disqualification or recusal of the trial court judge, a petition for recusal appeal shall be filed in the appropriate appellate court within twenty-one days of the trial court’s entry of the order. In civil cases, a bond for costs as required by Tenn. R. App. P. 6 shall be filed with the petition. A copy of the petition shall be promptly served on all other parties, and a copy also shall be promptly filed with the trial court clerk. For purposes of this section, “appropriate appellate court” means the appellate court to which an appeal would lie from the trial court’s final judgment in the case. [Amended by order filed November 22, 2016, effective January 1, 2017.]

NOTES TO DECISIONS

ANALYSIS

- 1. Timeliness.
- 2. Affidavit.

1. Timeliness.

Plaintiff’s interlocutory recusal appeal was not timely filed. The twenty-first day following entry of the January 8, 2019 order was January 29, 2019, and the twenty-first day after entry of the January 24, 2019 order was February 14, 2019, but the instant petition initiating the appeal was not filed until March 6, 2019. *Wat-*

son v. Watson, — S.W.3d —, 2019 Tenn. App. LEXIS 170 (Tenn. Ct. App. Apr. 8, 2019).

Dismissal of parent’s petition for recusal appeal was appropriate because the parent’s objection to hearing before appointed special judges was insufficient for review so that the parent’s claim for recusal contained in the motion was waived. Furthermore, the appellate court lacked jurisdiction to consider the petition because the parent failed to file the petition for an accelerated interlocutory appeal within twenty-one days of the date of entry of the order denying recusal. *Hastings v. Hast-*

ings, — S.W.3d —, 2020 Tenn. App. LEXIS 353 (Tenn. Ct. App. Aug. 6, 2020).

2. Affidavit.

Best practice was to proceed to consider the issues in a case notwithstanding a wife's failure to strictly comply with the rule because her motion to recuse the trial judge was based on personal knowledge; the affidavit and the recusal motion both readily revealed that the wife's

allegations were based on hearings where she was present and orders to which she was a party, and her affidavit specifically stated that the facts contained in her motion and appeal were based on personal knowledge. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS 302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

2.03. The petition for recusal appeal shall contain:

- (a) A statement of the issues presented for review;
- (b) A statement of the facts, setting forth the facts relevant to the issues presented for review;
- (c) An argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities; and
- (d) A short conclusion, stating the precise relief sought.

The petition shall be accompanied by a copy of the motion and all supporting documents filed in the trial court, a copy of the trial court's order or opinion ruling on the motion, and a copy of any other parts of the trial court record necessary for determination of the appeal.

NOTES TO DECISIONS

ANALYSIS

1. Recusal Denied.
2. Appeal.
3. Affidavit.

1. Recusal Denied.

Defendants were not entitled to recusal where they demonstrated no reason for recusal other than the fact that they were unhappy with a number of the rulings of the trial court. *Anderson Lumber Co. v. Kinney*, — S.W.3d —, 2019 Tenn. App. LEXIS 403 (Tenn. Ct. App. Aug. 21, 2019).

2. Appeal.

Defendants' motion for a recusal appeal was deficient because it did not show that the motion was presented to the trial court. *Anderson Lumber Co. v. Kinney*, — S.W.3d —, 2019 Tenn. App. LEXIS 403 (Tenn. Ct. App. Aug. 21, 2019).

Although the absence of the specific motion for recusal addressed by the trial court from the appellate submission amounted to noncompliance with the requirements—when a Substi-

tuted Motion to Recuse that was filed in the trial court nearly two weeks after the trial judge entered the order denying the recusal request instead was included—the appellate court proceeded to address the substance of the challenger's articulated grievances. In *re Estate of Dorning*, — S.W.3d —, 2020 Tenn. App. LEXIS 294 (Tenn. Ct. App. June 25, 2020).

3. Affidavit.

Best practice was to proceed to consider the issues in a case notwithstanding a wife's failure to strictly comply with the rule because her motion to recuse the trial judge was based on personal knowledge; the affidavit and the recusal motion both readily revealed that the wife's allegations were based on hearings where she was present and orders to which she was a party, and her affidavit specifically stated that the facts contained in her motion and appeal were based on personal knowledge. *Stark v. Stark*, — S.W.3d —, 2019 Tenn. App. LEXIS 302 (Tenn. Ct. App. June 18, 2019), appeal dismissed, — S.W.3d —, 2020 Tenn. App. LEXIS 36 (Tenn. Ct. App. Jan. 31, 2020).

2.04. The filing of a petition for recusal appeal does not automatically stay the trial court proceeding. However, either the trial court or the appellate court may grant a stay on motion of a party or on the court's own initiative, pending the appellate court's determination of the appeal.

2.05. If the appellate court, based upon its review of the petition for recusal appeal and supporting documents, determines that no answer from the other parties is needed, the court may act summarily on the appeal. Otherwise, the appellate court shall order that an answer to the petition be filed by the other parties. The court, in its discretion, also may order further briefing by the parties within the time period set by the court.

NOTES TO DECISIONS

1. Summary Action.

Court of appeals elected to act summarily on a husband’s appeal challenging the denial of his motion for recusal because neither an answer, additional briefing, nor oral argument was necessary. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).
Because an appellate court determined, after a review of a petition for recusal appeal and

supporting documents submitted with the petition, that an answer, additional briefing, and oral argument were unnecessary to the court’s disposition as deficiencies in the petition were fatal to the pro se petitioner’s claim, the appellate court elected to act summarily on the appeal. *Hastings v. Hastings*, — S.W.3d —, 2020 Tenn. App. LEXIS 353 (Tenn. Ct. App. Aug. 6, 2020).

2.06. An accelerated interlocutory appeal shall be decided by the appellate court on an expedited basis. The appellate court’s decision, in the court’s discretion, may be made without oral argument. Tenn. R. App. P. 39 (“Rehearing”) does not apply to the appellate court’s decision on an accelerated interlocutory appeal, and a petition for rehearing pursuant to that rule is therefore not permitted in such appeals.

NOTES TO DECISIONS

1. Summary Action.

Court of appeals elected to act summarily on a husband’s appeal challenging the denial of his motion for recusal because neither an answer, additional briefing, nor oral argument was necessary. *Elseroad v. Cook*, 553 S.W.3d 460, 2018 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 26, 2018).
Because an appellate court determined, after a review of a petition for recusal appeal and

supporting documents submitted with the petition, that an answer, additional briefing, and oral argument were unnecessary to the court’s disposition as deficiencies in the petition were fatal to the pro se petitioner’s claim, the appellate court elected to act summarily on the appeal. *Hastings v. Hastings*, — S.W.3d —, 2020 Tenn. App. LEXIS 353 (Tenn. Ct. App. Aug. 6, 2020).

2.07. In an accelerated interlocutory appeal decided by either the Court of Appeals or the Court of Criminal Appeals, a party may seek the Supreme Court’s review of the intermediate court’s decision by filing an accelerated application for permission to appeal. The application shall be filed in the Supreme Court within twenty-one days of the filing date of the intermediate court’s order or opinion. The accelerated application shall include an appendix containing: (a) copies of the petition and supporting documents filed in the intermediate appellate court; (b) copies of any answer(s) filed by order of the intermediate appellate court; and (c) a copy of the order or opinion filed by the intermediate appellate court. A copy of the accelerated application for permission to appeal shall be promptly served on all other parties. In civil cases in which the party seeking the Supreme Court’s review is not the party that filed the accelerated interlocutory appeal in the intermediate court, the party filing

the accelerated application shall file with the application a bond for costs as required by Tenn. R. App. P. 6.

If the Supreme Court, based upon its review of the accelerated application for permission to appeal, determines that no answer from the other parties is needed, the Court may act summarily on the accelerated application. Otherwise, the Court shall order that an answer to the application be filed by the other parties. The Court, in its discretion, also may order further briefing by the parties within the time period set by the Court. The Supreme Court shall decide the appeal on an expedited basis upon a de novo standard of review and, in its discretion, may decide the appeal without oral argument.

The accelerated application for permission to appeal authorized by this section 2.07 is the exclusive method for seeking the Supreme Court's review of the intermediate court's ruling on an accelerated interlocutory appeal filed under section 2. The provisions of Tenn. R. App. P. 11 therefore do not apply to such appeals. [As adopted by order filed January 4, 2012, effective July 1, 2012; amended by order filed June 19, 2013, effective June 19, 2013; and by order filed October 16, 2014 and effective October 16, 2014; amended by order filed November 22, 2016, effective January 1, 2017.]

NOTES TO DECISIONS

1. Appeal.

When, in a divorce, after a father did not appeal a trial court's denial of the father's motion for recusal, Tenn. Sup. Ct. R. 10B was amended, and the father again moved for recusal, asserting the same grounds, which was denied, an appeal of that denial was heard, to the extent the grounds alleged for recusal persisted, because the Rule's interim amendment

gave the trial court less discretion to deny the motion and gave an appellate court a less deferential standard of review, so it did not appear that the father was engaged in impermissible strategic conduct. *Duke v. Duke*, 398 S.W.3d 665, 2012 Tenn. App. LEXIS 704 (Tenn. Ct. App. Oct. 2, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 225 (Tenn. Feb. 26, 2013).

2.08. The time periods for filing a petition for recusal appeal pursuant to section 2.02 and for filing an accelerated application for permission to appeal to the Supreme Court pursuant to section 2.07 are jurisdictional and cannot be extended by the court. The computation of time for filing the foregoing matters under section 2 shall be governed by Tenn. R. App. P. 21(a). [Adopted by order filed November 22, 2016, effective January 1, 2017.]

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

In its order filed October 16, 2014, the Supreme Court provided that new Tenn. Sup. Ct.

R. 10B sets out the procedures for seeking the disqualification or recusal of a judge. On April 1, 2014, the Tennessee Bar Association ("TBA") filed a petition to amend Rule 10B.

As explained in the TBA's Petition, Rule 10B currently provides two alternative methods for appealing a trial court's denial of a recusal motion: (1) the trial court's denial of the motion can be appealed via an accelerated interlocutory appeal, or (2) the recusal issue can be raised in an appeal as of right, following the entry of the trial court's judgment. The TBA's petition presents two alternative proposals for amending Rule 10B: (1) amend the Rule to provide that the accelerated interlocutory appeal authorized in Rule 10B, Section 2, is the exclusive remedy for appealing a trial court's denial of a recusal motion (thereby deleting the

option for challenging the recusal ruling in an appeal as of right at the conclusion of the case); or (2) amend the Rule to provide that the de novo standard of review — which already applies to accelerated interlocutory appeals under the Rule—also applies to recusal issues raised in an appeal as of right.

On April 14, 2014, the Court filed an order soliciting public comments on the TBA’s alternative amendments, and the comment period expired on June 16, 2014. After due consideration of the TBA’s Petition and the written comments received during the comment period, the Court declines to adopt the TBA’s proposal to make the accelerated interlocutory appeal the exclusive method for appealing from the denial of a recusal motion. The Court, however, concludes that the TBA’s second alternative (amending the rule to apply the de novo standard of review in both types of appeals) has

merit. The Court chooses to incorporate that change in Section 2, rather than adopting a new Section 3 and renumbering the existing Sections 3-5, as proposed by the TBA. In addition to incorporating that change in Section 2, the Court also has decided to amend Section 2 to clarify the appellate procedures for recusal appeals. In particular, based on an issue that arose in a recent recusal appeal, the Court is amending Section 2.06 to explicitly provide that petitions to rehear are not permitted in accelerated interlocutory appeals under the Rule.

Accordingly, the Court hereby grants the TBA’s petition and amends Rule 10B by deleting the current Section 2 in its entirety and replacing it with the revised Section 2 set out in the Appendix to this order. This amendment shall take effect upon the filing of this order.

NOTES TO DECISIONS

1. Timeliness.

Dismissal of parent’s petition for recusal appeal was appropriate because the parent’s objection to hearing before appointed special judges was insufficient for review so that the parent’s claim for recusal contained in the motion was waived. Furthermore, the appellate

court lacked jurisdiction to consider the petition because the parent failed to file the petition for an accelerated interlocutory appeal within twenty-one days of the date of entry of the order denying recusal. *Hastings v. Hastings*, — S.W.3d —, 2020 Tenn. App. LEXIS 353 (Tenn. Ct. App. Aug. 6, 2020).

Section 3. Motion Seeking Disqualification or Recusal of Appellate Judge or Justice.

3.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge or justice of an appellate court shall do so by a timely filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials; the motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge or justice and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this rule.

NOTES TO DECISIONS

ANALYSIS

Consideration of Motion.
Motion Denied.

Consideration of Motion.

Judge was bound to follow Tenn. Sup. Ct. R. 10B, §§ 3.01, 3.02 and thus the attorney’s motion to recuse the judge from considering the attorney’s first recusal motion was denied. *Larry E. Parrish, P.C. v. Strong*, — S.W.3d —,

2019 Tenn. App. LEXIS 632 (Tenn. Ct. App. Mar. 8, 2021).

Motion Denied.

Attorney’s motion to recuse was denied; he offered no reasons for the judge being intentionally wrong other than an overarching conspiracy among all judges to be result-oriented, which allegations did not meet the requirements of the rule. The judge denied engaging in any result-oriented decision-making and held

that the attorney's allegations actually attacked the entire judicial system and were beyond the scope of the rule. *Larry E. Parrish,*

P.C. v. Strong, — S.W.3d —, 2019 Tenn. App. LEXIS 632 (Tenn. Ct. App. Mar. 8, 2021).

3.02.

(a) Upon the filing of a motion seeking disqualification, recusal, or determination of constitutional or statutory incompetence of an intermediate appellate judge, the judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion. If the judge denies the motion, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate court upon a *de novo* standard of review.

(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of more than one judge of the intermediate appellate court (“recusal motion”), and if the recusal motion is denied by the judges in question, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate appellate court who were not subjects of the recusal motion, upon a *de novo* standard of review. If there are not three judges of the intermediate appellate court who were not subjects of the recusal motion, then a motion for court review pursuant to this section 3.02(b) is not available; under such circumstances, the order denying the recusal motion may be appealed pursuant to section 3.02(c).

(c) If the motion for court review is denied, or if a motion for review is not available pursuant to section 3.02(b), an accelerated appeal as of right lies to the Tennessee Supreme Court, which shall expeditiously decide the appeal based upon the petition and other papers filed in the intermediate appellate court. The appeal to the Supreme Court shall be titled “recusal appeal from the [Court of Appeals or Court of Criminal Appeals]” and shall be filed within twenty-one days of the intermediate appellate court’s order denying the motion for court review or, if a motion for review was not available pursuant to section 3.02(b), within twenty-one days of the order denying the motion seeking disqualification or recusal of the appellate judges in question. [Amended by order filed November 22, 2016, effective January 1, 2017.]

NOTES TO DECISIONS

Consideration of Motion.

Judge was bound to follow *Tenn. Sup. Ct. R. 10B*, §§ 3.01, 3.02 and thus the attorney’s motion to recuse the judge from considering the

attorney’s first recusal motion was denied. *Larry E. Parrish, P.C. v. Strong*, — S.W.3d —, 2019 Tenn. App. LEXIS 632 (Tenn. Ct. App. Mar. 8, 2021).

3.03.

(a) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of a Supreme Court justice, the justice in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the justice shall state in writing the grounds upon which he or she denies the motion. If the justice denies the motion, the movant, within twenty-one days of entry of the order, may file a

motion for court review, which shall be determined promptly by the remaining justices upon a de novo standard of review.

(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of more than one justice of the Supreme Court, and if the motion is denied by the justices in question, no motion for court review shall be available pursuant to section 3.03(a). In such cases, the ruling on the motion is not subject to review by the other justices of the Court. [As adopted by order filed January 4, 2012, effective July 1, 2012; amended by order filed November 22, 2016, effective January 1, 2017.]

3.04. The time periods for filing a motion for court review pursuant to sections 3.02(a) or 3.03(a) and for filing a “recusal appeal from the [Court of Appeals or Court of Criminal Appeals]” pursuant to section 3.02(c) are jurisdictional and cannot be extended by the court. The computation of time for filing the foregoing matters under section 3 shall be governed by Tenn. R. App. P. 21(a). [As adopted by order filed November 22, 2016, effective January 1, 2017.]

Compiler’s Notes. In its order filed January 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification

or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

Section 4. Motion Seeking Disqualification or Recusal of Judicial Officer Other Than Judge of Court of Record.

4.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judicial officer acting in a capacity other than as judge of a court of record or as an appellate judge shall do so by timely making a written or oral motion. A written motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. A motion, whether written or oral, shall state with specificity all factual and legal grounds supporting disqualification of the judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to make a pro se motion under this rule. [Amended by order filed November 22, 2016, effective January 1, 2017.]

4.02. While the motion is pending, the judicial officer whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

4.03. Upon the making of a motion pursuant to section 4.01, the judicial officer shall act promptly and, in writing, either grant or deny the motion. A written notation of the ruling on the judgment, warrant, citation, or other

pleading before the judicial officer shall meet the writing requirement of the foregoing sentence; a separate written order is not required.

4.04. Judicial review of the denial of a motion made under section 4.01 necessarily depends on the forum in which the motion is made and is governed by the law applicable to that forum. [As adopted by order filed January 4, 2012, effective July 1, 2012.]

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification

or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

Section 5. Right to File Ethical Complaint Unaffected. The provisions of this rule do not affect the right of any person to file an ethical complaint against a judge pursuant to Title 17, Chapter 5, Tennessee Code Annotated. [As adopted by order filed January 4, 2012, effective July 1, 2012; amended by order filed November 22, 2016, effective January 1, 2017.]

Explanatory Comments. This rule provides a procedural framework for determining when a judge should not preside over a case. There are several bases for determining when a judge should not preside over a case, including Article VI, Section 11 ("Incompetency of judges — Special Judges") of the Tennessee Constitution, Tenn. Code Ann. § 17-2-101 ("Grounds of incompetency"), and Tenn. S. Ct. R. 10, RJC 2.11 ("Disqualification").

Section 1. Section 1 provides a procedural framework for determination of when the judge of a trial court of record should not preside over a case.

Section 1.02 provides that, while the motion is pending, the judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause. A finding by the judge that the motion is frivolous, untimely, or interposed merely for delay constitutes good cause, as anticipated by section 1.02, such that the trial judge may continue to preside over the case to the extent the judge deems appropriate.

Although the rule does not state a specific period of time within which the motion must be filed, a motion under this rule should be made promptly upon the moving party becoming aware of the alleged ground or grounds for such a motion. The requirement that the motion be timely filed is therefore intended to prevent a party with knowledge of facts supporting a recusal motion from delaying filing the motion to the prejudice of the other parties and the case. Depending on the circumstances, delay in bringing such a motion may constitute a waiver

of the right to object to a judge presiding over a matter. Further, the delay in bringing a motion or the timing of its filing may also suggest an improper purpose for the motion.

Section 1.03 provides that, if the judge denies the motion, "the judge shall state in writing the grounds upon which he or she denies the motion." That requirement is intended both to inform the parties of the basis for the judge's ruling and to facilitate appellate review, should the unsuccessful movant file an appeal. By comparison, if the judge grants a disqualification motion, there is no need for the order to state the grounds of the ruling because, in granting the motion, the judge has determined that it would not be appropriate for him or her to preside over the case. And for that reason, this rule does not permit an appeal from the granting of a disqualification motion.

Juvenile courts are courts of record, and the judges of those courts therefore are included within this section. Thus, a juvenile court judge who denies a disqualification motion must file a written order complying with section 1.03. Other judicial officers who serve in a juvenile court, such as a magistrate or referee, are covered by section 4 of this rule.

Section 2. Section 2 provides for an accelerated interlocutory appeal as of right from a trial judge's order denying a motion for disqualification. It also sets out the appellate procedure governing such appeals. The provisions of this rule supercede any inconsistent provisions of the Tennessee Rules of Appellate Procedure for purposes of the accelerated interlocutory appeal. Additionally, because section 2.01 states

the two “exclusive methods” for seeking appellate review of the trial judge’s ruling on a motion filed pursuant to this rule, neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge’s ruling on such a motion.

Section 2.02 states that “appropriate appellate court,” as used in the section, means the court to which an appeal would lie from the trial court’s final judgment in the case. Thus, the petition for recusal appeal should be filed in the Court of Appeals in cases that would be appealed to that court following the trial court’s final judgment. Similarly, the petition should be filed in the Court of Criminal Appeals in cases that would be appealed to that court following the trial court’s final judgment. The petition should be filed in the Supreme Court in worker’s compensation cases, which are appealed directly to the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225.

As stated above, juvenile courts are courts of record. The accelerated interlocutory appeal procedure set out in section 2 therefore applies to a juvenile court judge’s denial of a disqualification motion. As a result, an interlocutory appeal as of right lies to either the Court of Appeals or the Court of Criminal Appeals (see the definition of “appropriate appellate court” in section 2.02) from the juvenile court judge’s denial of a disqualification motion, even in those juvenile proceedings in which a de novo appeal to criminal or circuit court is ordinarily available. See Tenn. Code Ann. § 37-1-159(a) (providing for a de novo appeal to criminal court in a delinquency proceeding and for a de novo appeal to circuit court in an unruly child proceeding or a dependent and neglect proceeding).

Section 3. Section 3 provides a procedural framework for determination of when an appellate judge or justice should not preside over a case. It also provides for review of the judge’s or justice’s decision if he or she denies the motion. See the Comment to section 1 for a discussion of the timeliness of motions filed pursuant to this rule. Also, see the Comment to section 1.03 for a discussion of the requirement that, if the judge or justice denies the motion, “the judge [or justice] shall state in writing the grounds upon which he or she denies the motion.”

Section 4. Section 4 provides a procedural framework for determination of when a judicial officer other than a judge of a trial court of record or an appellate judge should not preside over a case. Note, however, that section 1 of this rule applies to a “judge acting as a court of record.” Consequently, section 1 applies to a general sessions judge who, by private act, exercises jurisdiction over certain types of cases typically heard in courts of record (e.g., family-law cases, juvenile proceedings, etc.). See the Comment to section 1 for a discussion of the

timeliness of motions made pursuant to this rule.

Given the informality of proceedings before judges of the general sessions and municipal courts, as well proceedings before other types of judicial officers, and because of the varying statutes, ordinances, and rules and regulations applicable to the many different types of proceedings before such officers, it is not possible to address in this rule the method for seeking judicial review of the denial of a motion for disqualification in every type proceeding covered by this section. Section 4 therefore does not establish specific appeal procedures governing recusal motions made in such proceedings. Thus, the general law applicable to each proceeding will govern. For example, a general sessions court’s judgment in a civil case can be appealed to circuit court for a de novo proceeding; with a de novo review of the general sessions court’s judgment readily available, there is no need for a separate appeal mechanism for reviewing a general sessions judge’s denial of a motion for disqualification. Similarly, rulings of some judicial officers (e.g., a magistrate, referee or master) can be subject to the approval or review of a judge of a court of record. These examples are provided to illustrate that, in the various proceedings covered by this section, review of a judge’s or other judicial officer’s denial of a motion for disqualification should be sought in accordance with the appeal procedure generally available for review of the judge’s or judicial officer’s other rulings.

2016 Amendments. Effective January 1, 2017, Rule 10B is amended in the following respects.

Sections 2.08 and 3.04 are added to the rule. Those new provisions provide that the time periods for filing the various documents specified in sections 2 and 3 are jurisdictional and cannot be extended by the court. The new sections 2.08 and 3.04 also provide that the computation of time for filing those various documents is governed by Tenn. R. App. P. 21(a).

Section 3.02 also is amended by adding new subdivision (b) to address the situation in which a motion alleges grounds for the disqualification or recusal of more than one judge of an intermediate appellate court. Because review by other judges of the intermediate court is not feasible in cases in which the motion alleges grounds for disqualifying or recusing multiple judges on the court, section 3.02(b) provides that a motion for court review is not available in the intermediate appellate court under those circumstances. Instead, the amended rule permits an appeal from the intermediate court to the Supreme Court in such cases, without a motion for court review having been filed in the intermediate appellate court. Similarly, section 3.03 is amended by adding

new subdivision (b) which states that a motion for court review is not available in cases in which a motion for disqualification or recusal alleges grounds pertaining to more than one justice of the Supreme Court.

Sections 2 and 3 also are amended to increase the time limits for filing the various documents specified in those two sections of the rule. The former time limits for filing such documents were either ten days or fifteen days, depending on the particular document. Because sections 2 and 3 are simultaneously amended to make the time limitations jurisdictional, the time limits are increased to twenty-one days to ensure that litigants have sufficient time to meet those deadlines.

Lastly, a number of "housekeeping" amendments are made to the rule and its comments,

i.e., non-substantive changes relating to formatting, etc.

Compiler's Notes. In its order filed January 4, 2012, the Supreme Court provided that new Tenn. Sup. Ct. R. 10B establishes procedures for filing motions for disqualification or recusal of a judge and for appeals from the denial of such motions. Rule 10B shall take effect on July 1, 2012, and shall have prospective application only, applying to all motions for disqualification or recusal filed on or after that date. In a separate order, the Court also is adopting Advisory Commission Comments to certain rules set out in the Rules of Appellate, Civil, Criminal and Juvenile Procedure, which Comments will provide appropriate cross-references to the procedures set out in the new Tenn. Sup. Ct. R. 10B.

APPENDIX

REQUEST FOR DESIGNATION OF JUDGE

Presiding Judge/Presiding Judge *Pro Tem* _____
Name (Print or Type) _____
Judicial District _____ Recusing Judge _____
Case Name & Docket # _____
County _____ Court _____
Case Information: Jury Case _____ Non-Jury Case _____
Brief description and estimated length of case _____

I, as Presiding Judge/Presiding Judge Pro Tem, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(2) and Tenn. Code Ann. § 16-2-509(c), have contacted the judges within my judicial district and have been unable to assign the case listed above by interchange to any trial judge within my judicial district.

I, pursuant to Tenn. Sup. Ct. R. 11, § VII(c)(3) and Tenn. Code Ann. § 16-2-509(d), have also contacted the Presiding Judge within our contiguously located judicial districts and have been unable to assign the case by interchange to other trial judges within adjoining judicial districts.

This case has been set for hearing on _____
(provide date, if applicable)

Pursuant to Tenn. Code Ann. §§ 16-3-502(3)(A) and 17-2-110, I hereby certify to the Chief Justice of the Tennessee Supreme Court that I have unsuccessfully attempted to arrange an interchange by following the sequential steps set forth in Tenn. Sup. Ct. R. 11, § VII(c). Therefore, I respectfully request that the Chief Justice designate another judge or chancellor to hear and decide the case(s) in this matter.

Signature of Presiding Judge/Presiding Judge *Pro Tem*

Administrative Office of the Courts
Attn: Designation Coordinator
Nashville City Center, Suite 600
511 Union Street
Nashville, TN 37219
designation.coordinator@tncourts.gov
Fax: 615-741-6285

[As adopted by order filed and effective November 1, 2018.]

Rule 11. Supervision of the Judicial System.

Compiler’s Notes. In its order filed January 4, 2012, the Supreme Court adopted amendments to Tenn. Sup. Ct. R. 11. The amendments to Rule 11 shall take effect July 1, 2012.

I. General. — This Rule is promulgated pursuant to the inherent power of this Court and particularly the following subdivisions of Tenn. Code Ann. § 16-3-502(3), providing that the Supreme Court shall have the power:

(1) To designate and assign temporarily any judge or chancellor to hold, or sit as a member of any court, of comparable dignity or equal or higher level, for any good and sufficient reason.

* * *

(2) To take affirmative and appropriate action to correct or alleviate any imbalance in case loads among the various judicial circuits and chancery divisions of the state.

(3) To take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state.

(4) To take all such other, further and additional action as may be necessary to the orderly administration of justice within the state, whether or not herein or elsewhere enumerated.

Its purpose is as follows:

- a. To correct or alleviate case load imbalances in the various judicial circuits and chancery divisions of the State.
- b. To reduce docket congestion thereby holding trial delays to a minimum.
- c. To promote the orderly and efficient administration of justice within the State.

[As amended by order filed and effective November 1, 2018.]

Compiler's Notes. In its order filed November 1, 2018, the Supreme Court provided "On September 25, 2018, the Court filed an order soliciting public comments on proposed amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was October 26, 2018. The Court received only one written comment during the comment period, a comment

from the Tennessee Bar Association supporting the proposed amendments.

"After due consideration, the Court hereby adopts the amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

II. Functional improvement of judicial system — Uniform procedures for data collection in civil and criminal matters in circuit, criminal, chancery, probate, and general sessions courts. — a. The judicial system of this State henceforth will function as an integrated unit under the direction and supervision of the Supreme Court.

b. Pursuant to its statutory duty to assist the Chief Justice of the Tennessee Supreme Court in improving the administration of justice, the Administrative Office of the Courts (AOC), working with a committee of representatives from the District Attorneys' General Conference, the Public Defenders' Conference, the Tennessee Judicial Conference, and the Clerks of Court Conference, has developed a procedure for the collection of uniform statistical data on matters filed in the Circuit, Criminal, and Chancery Courts of this state.

c. The Court finds that the data collection procedure designed by the Administrative Office of the Courts, in conjunction with the above-named committee, will aid in the accomplishment of the AOC's statutory duties, (Tenn. Code. Ann. § 16-3-803(g)), that the collection of statistical data by the AOC is specifically authorized by statute (Tenn. Code. Ann. § 16-3-803(i)); and that all judges, clerks of court, district attorneys general, district public defenders, other officers or employees of the courts, and all staff of offices or employees related to and serving the courts, are charged with complying with

all requests for information from the Administrative Director of the Courts. Further, to ensure that comparable data is collected from all of the courts, data collection shall follow the standard definition of a case as set forth in Tenn. Code. Ann. § 16-1- 117.

(1) Responsibility for Submission of Data.

Each clerk of a circuit, criminal, chancery, probate, general sessions, or municipal court with general sessions jurisdiction is responsible for submitting the data required by this rule to the Technology Services Division of the Administrative Office of the Courts. Submission of data specified by this rule shall be filed with the AOC not later than fifteen (15) days after the close of the month in which the case was filed and also the month in which it was disposed.

Clerks for courts of record other than juvenile court shall require that any complaint and summons filed to commence, reopen, or reinstate a civil action shall be accompanied by a Civil Case Cover Sheet for reopened cases, which has been completed by the initiating party or his/her representative. The clerks shall also require a new Civil Case Cover Sheet (Reopened Cases) to be completed upon the grant of a new trial. Upon issuance of a final order disposing of the case, the clerk of court shall complete the disposition portion of the Civil Case Cover Sheet in full. For clerks who report electronically, all initial filings, reopens and the subsequent dispositions shall be reported in the monthly data file to the AOC according to the specifications provided by the AOC. For clerks who cannot report electronically, a copy of the cover sheet containing this disposition information shall then be forwarded to the AOC on a monthly basis.

In addition, the clerks of courts of record other than juvenile shall require that any indictment, presentment or criminal information that initiates a criminal action in circuit or criminal court shall be reported to the AOC according to the specifications provided by the AOC (accompanied by a Criminal Case Cover Sheet which has been completed by the district attorney general or his/her office. The clerks shall complete a new Criminal Case Cover Sheet upon the grant of a new trial, upon a case appealed from a lower court, or upon any petition to re-open or reinstate a criminal action). Upon issuance of a final order or judgment disposing of the case, the clerk of the court shall report electronically the disposition for each docket number and all related charges according to the specifications provided by the AOC.

Clerks' offices that are automated shall report statistical information monthly to the AOC by submitting an electronic file according to the specifications provided by the AOC. In the event that a clerk is unable to do so due to technical difficulties, the clerk may report by sending the completed Criminal Case Cover Sheets and/or Civil Case Cover Sheets to the AOC.

(2) Administrative Director; Reports Public Record When Filed.

All reports specified by these rules shall be public records. The Administrative Director of the Courts shall publish an annual compilation of the reports. All judges, court clerks, district attorneys general, district public defenders, and officers of the court shall cooperate with the Administrative Director to ensure the accuracy of the reports. As required by statute, the Administrative Director of the Courts shall annually report to the Chair of the Judiciary Committee of the Senate, the Chair of the Judiciary Committee of the House

of Representatives, and the Office of the Comptroller Division of Research and Accountability as to the failure of any judge, district attorney general, district public defender, or court clerk to comply with any of the reporting requirements.

Compliance with the reporting requirements includes, but is not limited to, submitting data files or, if for those who cannot report electronically, cover sheets within the fifteen (15) day time frame, submitting data every month, submitting data according to specifications provided by the AOC, and using correct case numbering and definitions.

The Administrative Office of the Courts will provide written notification to any responsible reporting party found not to be in compliance with the statute or reporting guidelines. Written notification will detail the type of non-compliance and recommend the corrective action to be taken. If compliance is not achieved during the subsequent reporting period following notification, the Administrative Office of the Courts will no longer accept data from the office not in compliance, until such time as the error(s) are corrected. Notification of this action will be sent to all judges, district attorneys general, district public defenders, and court clerks within the district that the non-complying office is located in. Notification will also be sent to the District Attorneys General Conference, the District Public Defenders Conference, the Administrative Office of the Courts, and the County Officials Association of Tennessee. Any periods of non-compliance will also be reported in the annual report to the chairs of the House and Senate Judiciary Committees.

The Technology Services Division of the AOC shall provide an Implementation Manual that contains commentary and explanatory material pertaining to these rules and the report forms required by these rules. The Implementation Manual shall also contain a data dictionary outlining data to be submitted and the format for that data.

(3) Case Counting.

For purposes of this rule, the term “docket number” is defined as the separate and distinct identification number used for a case once it is filed in criminal, circuit, chancery, or probate court.

Each criminal case shall be assigned a unique docket number. A criminal case shall be defined and reported as a single charge or set of charges arising out of a single incident concerning a single defendant in one (1) court proceeding. An incident shall be all criminal activity occurring on the same date. A court proceeding refers to a single level of court, such as general sessions or circuit. An appeal, probation revocation, or other postjudgment proceeding shall be considered a separate case. This definition shall not alter the practice in the Tennessee rules of criminal procedure dealing with joinder and severance of criminal cases. In addition, in courts of record, multiple incidents shall be counted as a single case when the charges are of a related nature and it is the district attorney general’s intention that all of the charges be handled in the same court proceeding pursuant to a single charging document.

A civil case shall be defined as all motions, petitions, claims, counter claims, or proceedings between the parties resulting from the initial filing until the case is disposed. A docket number will be assigned to a civil case upon

filing. Until said cases are disposed all subsequent motions, petitions, claims, counter claims, or proceedings between the parties resulting from the initial filing will be handled under the assigned docket number and will not be assigned a new docket number. Once a civil case has been disposed and further actions occur on the case, the original case will be reopened using the same docket number under which it was originally filed. All subsequent motions, petitions, claims, counter claims, and proceedings relating to the reopened case will be handled under the one reopened case docket number until disposed. Any subsequent reopenings will still use the original docket number.

(4) General Sessions Reporting.

Effective July 1, 2003, or sooner if practical, all general sessions courts and municipal courts with general sessions jurisdiction shall collect and report to the AOC all civil and criminal case data in accordance with the definitions provided under Part (3) above and guidelines published by the AOC.

Clerks of general sessions and municipal courts with general sessions jurisdiction shall submit data monthly according to specifications provided by the AOC.

General sessions courts and municipal courts with general sessions jurisdiction having an automated case management system shall report the collected data in accordance with the guidelines by electronic data file submission. [As amended by order filed December 4, 2013, effective January 1, 2014; amended by order filed and effective November 1, 2018; amended by order filed and effective October 29, 2019.]

Compiler’s Notes. In its order filed December 4, 2013, the Supreme Court provided that Rule 11, Section II, Rules of the Tennessee Supreme Court, is hereby amended by deleting Section II(c)(3) (“Case Numbering”) in its entirety and replacing it with the new Section II(c)(3) contained herein. This amendment shall take effect on January 1, 2014.

In its order filed November 1, 2018, the Supreme Court provided “On September 25, 2018, the Court filed an order soliciting public comments on proposed amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was October 26, 2018. The Court received only one written comment during the comment period, a comment from the Tennessee Bar Association supporting the proposed amendments.

“After due consideration, the Court hereby adopts the amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

In its order filed October 29, 2019, the Supreme Court provided “To assist the Administrative Office of the Courts with more accurately collecting, developing, and maintaining uniform statistical information relative to court caseloads in Tennessee, as it is required to do by Tennessee statutes, the Court hereby amends Rule 11, section II of the Rules of the Tennessee Supreme Court by deleting subsection (c) in its entirety and replacing it with revised subsection (c), as set out in Appendix A to this Order. Also attached to this Order as Appendix B is a redlined version showing the amendments to subsection (c).”

III. Procedure for designation of presiding judges; assignment of cases; cases under advisement. —

a. *Presiding judge.* In each judicial district all judges will select one from their number to serve as presiding judge beginning September 1 of each year. In August of each year, the judges within each district shall assemble at the call of the presiding judge and select a successor to such presiding judge who shall serve until September 1 of the next succeeding year. A presiding judge shall be eligible to succeed him or herself. If upon any selection date the judges in any district fail to choose or are unable to agree upon the selection of a

presiding judge, the Chief Justice of the Supreme Court shall designate one of their number to serve.

b. *Presiding Judge Pro Tempore.* Each judicial district shall select one from their number to serve as presiding judge pro tempore beginning September 1 of each year. The presiding judge pro tempore will be selected in the same manner as the presiding judge. The presiding judge pro tempore's primary responsibility will be to effect interchange when the presiding judge recuses himself or herself from a case.

c. *Assignment of cases.* Cases shall be assigned by, or under the supervision of the presiding judge, and all judges will hear and determine cases without regard to their nature or the category of cases normally heard, and determined by any particular judge. The major objective of presiding judges should be to achieve an equitable distribution of the workload and an equal sharing of the bench and chamber time necessary to dispose of the total case load within acceptable time limits.

d. *Cases under advisement.* No case may be held under advisement in excess of sixty days and no motion, or other decision of the trial judge that delays the date of trial or final disposition in the trial court, shall be held under advisement for more than thirty days, absent the most compelling of reasons. (See Tenn. Code Ann. § 20-9-506) A MOTION TO RENDER DECISION may be filed with the presiding judge and the circuit justice, or either of them by any attorney of record in a case, setting out the facts said to constitute a failure to comply with this rule.

e. It shall be the duty of the presiding judge to:

- (1) Reduce docket delays and hold congestion to a minimum;
- (2) Seek and maintain an equitable distribution of the workload and an equal sharing of the bench and chambers time necessary to dispose of the business of the district;
- (3) Promote the orderly and efficient administration of justice within the district;
- (4) Take immediate and affirmative action to correct or alleviate any caseload imbalance, or any condition adversely affecting the administration of justice within the district; and
- (5) To effectuate the above duties, the presiding judge may assign cases to judges and chancellors within the district. In assigning cases, the presiding judge shall, whenever possible and not detrimental to the orderly and efficient administration of justice, give due regard to the court upon which the judge or chancellor serves, the judge's or chancellor's particular background, experience and preference and economy of judicial travel time.

f. If a presiding judge finds that he/she is unable to correct a caseload imbalance or reduce docket delays utilizing the available judges within the district, it shall be the affirmative duty of such presiding judge to contact the circuit justice for that judicial district. (See Tenn. Code Ann. § 16-2-509). [As amended by order filed and effective November 1, 2018.]

Compiler's Notes. In its order filed November 1, 2018, the Supreme Court provided "On September 25, 2018, the Court filed an order soliciting public comments on proposed amend-

ments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was October 26, 2018. The Court received only one written com-

ment during the comment period, a comment from the Tennessee Bar Association supporting the proposed amendments.
“After due consideration, the Court hereby adopts the amendments to Rules 10B and 11 of

the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

IV. Assignment of judges. — The director of the Administrative Office of the Courts has been instructed to make a continuing survey of case loads, docket congestion and related matters.

Circuit and criminal judges and chancellors will be assigned from time to time by order of the Supreme Court to hold court in other circuits and divisions when necessary to promote the orderly and efficient administration of justice.

V. Circuit justices. — In order to supervise the procedures herein set forth and to carry out the general supervisory power of this Court, each member of the Supreme Court has been designated as Circuit Justice for the judicial districts as follows:

Circuit No. 1

Circuit Justice: Sharon G. Lee

The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Judicial Districts.

Circuit No. 2

Circuit Justice: Roger A. Page

The 9th, 10th, 11th, 12th, 13th and 31st Judicial Districts.

Circuit No. 3

Circuit Justice: Cornelia A. Clark

The 14th, 15th, 16th, 18th, 19th and 20th Judicial Districts.

Circuit No. 4

Circuit Justice: Jeffrey S. Bivins

The 17th, 21st, 22nd, 23rd, 24th and 26th Judicial Districts.

Circuit No. 5

Circuit Justice: Holly M. Kirby

The 25th, 27th, 28th, 29th and 30th Judicial Districts.

It shall be the responsibility of the Circuit Justices to aid, assist and supervise in the responsibility of this rule, under the Chief Justice who is recognized to be the executive head of the Judicial Department of Tennessee. [As amended by order filed September 1, 2010; and further amended by order filed September 11, 2014; and further amended by order filed September 9, 2015; and further amended by order filed and effective February 23, 2016.]

VI. Administration of the Civil Legal Representation of Indigents Fund.

a.(1) Revenue deposited into the Civil Legal Representation of Indigents Fund in the Office of the State Treasurer, pursuant to Public Acts, 1995, Chapter 550, and Public Acts 1999, Chapter 502, shall be paid quarterly by the Treasurer to the four not-for-profit legal organizations listed below, in the corresponding percentage listed for each organization. This funding percentage, like the funding percentage to each organization within the Legal Services Corporation, is based on the poverty populations of the service area of each organization. The four organizations and their respective percentages are:

Legal Aid Society of East Tennessee	31.79%
Legal Aid Society of Middle Tennessee and the Upper Cumberland	39.55%
Memphis Area Legal Services	19.78%
West Tennessee Legal Services	8.88%

(2) Pursuant to Public Acts, 2001, Chapter 456, Section 7, Paragraph (2), twenty-five percent (25%) of the proceeds deposited into the Civil Legal Representation of Indigents Fund, as a result of Public Chapter 456, shall be paid to the Tennessee Alliance for Legal Services, a statewide non-profit organization providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation to indigents. The remainder of the proceeds deposited in the Fund pursuant to Chapter 456, Section 7, Paragraph (2) shall be paid to the four not-for-profit organizations listed in a(1) in the corresponding percentages.

b. Funds paid to the not-for-profit organizations listed above shall be used for expenses incurred in the legal representation of poor persons in civil matters by either staff attorneys of the organizations or volunteer attorneys in pro bono programs organized and administered by local bar associations in this State.

c. Each of the not-for-profit organizations receiving funding shall report annually to the Administrative Director of the Courts as to the allocation and expenditure of the funding received. The report shall be prepared in a manner prescribed by the Administrative Director of the Courts, which shall include a description of legal aid activities provided in each county, and a description of the efforts of the legal aid organization designed to foster and encourage the involvement of volunteer attorneys in the delivery of legal services to the poor.

d. Each not-for-profit organization receiving monies from the Fund shall provide a copy of its audited financial statements for the preceding calendar year to the Administrative Director of the Courts on or before June 30th of each year.

e. All unexpended or uncommitted funds received by a designated not-for-profit organization during its fiscal year shall be returned by the organization to the State Treasurer, which monies will be distributed the following year to the participating organization in accordance with paragraph (a).

f. A designated organization's receipt of monies from the Fund shall be conditioned upon the organization's adherence to the underlying principles of the American Bar Association's Standards for Providers of Civil Legal Services to the Poor.

g. The Administrative Director of the Courts annually shall prepare and distribute to the members of the Supreme Court and to the Judiciary Committees of the General Assembly:

- (1) a report detailing the expenditure of monies from the Fund;
- (2) a copy of any rules and policies adopted by the Supreme Court governing the expenditure and application of monies from the Fund. [As amended by order filed June 29, 2012, effective July 1, 2012; amended November 25, 2013, effective July 1, 2014; amended August 18, 2016, effective September 1, 2016.]

Compiler's Notes. In its order filed July 2, 2012, the Supreme Court provided that: "the court directs the administrative office of the courts to allocate the grants authorized by Acts 2012, ch. 1029, § 74, item 8 among the four not-for-profit legal organizations listed in Tenn. Sup. Ct. R. 11, § VI a.(1), in the corresponding percentages listed for each organization in the rule. Pursuant to item 8, the grants shall be used by those organizations for domestic vio-

lence prevention and services. Acts 2012, ch. 1029, § 74, item 8 provides as follows: "In addition to any other funds appropriated by the provisions of this act, there is appropriated the sum of \$150,000 (non-recurring) to the Administrative Office of the Courts for the sole purpose of making grants to legal aid programs in each grand division to be used for domestic violence prevention and services."

VII. Courts to be Open; Substitute Judges.

a. Pursuant to the inherent powers of the Supreme Court (*see* Art. I, § 1, Tennessee Constitution, Tenn. Code Ann. § 16-3-503, Tenn. Code Ann. § 16-3-504) and in discharge of the Court's responsibility to ensure the harmonious, efficient and uniform operation of the judicial system (*see* Tenn. Code Ann. § 16-3-501), this rule is adopted for the purpose of implementing the provisions of Tenn. Code Ann. § 16-2-509; § 16-3-502(2) and (3); § 17-2-118 and Tenn. Code Ann. § 17-2-201 et seq. and § 17-2-304 so as to accomplish the mandate of Art. I, § 17 of the Tennessee Constitution.¹

b. *Courts to be Open.* Art. I, § 17 of the Tennessee Constitution provides that "[a]ll courts shall be open; and every man for an injury ... shall have remedy by due course of law, and right and justice administered without sale, denial, or delay." In furtherance of this constitutional mandate, it is the policy of the Tennessee Judicial Department that all courts of this state shall be open and available for the transaction of business except on Saturdays, Sundays, legal holidays, and during meetings of the Tennessee Judicial Conference required by law. This rule sets forth the procedure which shall be followed when a judge of a trial court of record is absent.

c. *Substitute Judges.* Where a judge of a trial court of record fails to attend or is unable to hold court, as provided in Tenn. Code Ann. § 17-2-118, the following procedure shall be followed, in the sequence designated, for the selection of a substitute judge.

- (1) The judge shall seek interchange in accordance with Tenn. Code Ann. § 17-2-202;
- (2) The judge shall apply to the presiding judge or, if the applying judge is the presiding judge, the presiding judge pro tempore of the judicial district to effect an interchange with a judge of that judicial district in accordance with Tenn. Code Ann. § 16-2-509(c);

¹This rule is promulgated pursuant to the Court's rule making power. It is not an adjudication of the validity or meaning of any of these statutes, and it does not address the meaning, validity, or constitutionality of the statute here pertinent.

(3) The presiding judge or the presiding judge pro tempore of the judicial district shall effect an interchange with a judge from another judicial district in accordance with Tenn. Code Ann. § 16-2-509(d);

(4) The presiding judge or the presiding judge pro tempore shall request from the director of the Administrative Office of the Courts the designation of a judge by the Chief Justice, in accordance with Tenn. Sup. Ct. R. 10B, § 1.04, Tenn. Code Ann. §§ 16-3-502(3)(A) and 17-2-110. The presiding judge or presiding judge pro tempore shall use the designation request form appended at the end of Tenn. Sup. Ct. R. 10B.

d. *Attorneys as Judges.* Only if the procedures set forth above fail to provide a judge to preside over the docket or case will a judge appoint a lawyer to preside as a substitute judge pursuant to Tenn. Code Ann. § 17-2-118. Appointments pursuant to this section will conform to the following requirements:

(1) An attorney who is appointed substitute judge must possess all the qualifications of a judge, including the age and residency requirements; and the attorney must be in good standing under the rules of this Court. The substitute judge shall be subject to the applicable provisions of the Code of Judicial Conduct, including Canon 8.

(2) The substitute judge shall take an oath of office as provided in Tenn. Code Ann. § 17-2-120, and the substitute judge shall certify compliance with this rule by affixing his or her signature to the consent form which is appended to this rule.

(3) The authority of a substitute judge to fix fees pursuant to Tenn. Code Ann. § 17-2-118 is limited to cases in which the exact amount of the fees is set by statute.

(4) The substitute judge must ensure that all litigants who are present at the beginning of each proceeding give their consent to the use of a substitute judge in their case. All litigants who are present at the beginning of the proceedings in a case and the attorneys of record for all parties who consent to the service of the substitute judge must complete Part B of the substitute judge consent form. Without such consent, the substitute judge shall not preside on that case. Part C of the substitute judge consent form must be completed by the substitute judge in each case on which that judge presides.

(5) The absent judge must complete Part A of the substitute judge consent form. The judge must specify the reason for his or her absence. If the judge cites absence for a cause other than a reason listed in Tenn. Code Ann. § 17-2-118(a), the specific reason for the absence must be set forth on the form.

(6) The clerk of the court shall certify that the appointment was made and that the substitute judge took the statutory oath of office and that the oath of office was filed in the clerk's office. The certification shall be made on Part D of the substitute judge consent form.

(7) At the end of each month, all substitute judge consent forms will be transmitted by the presiding judge of the judicial district to the Administrative Office of the Courts, Suite 600, Nashville City Center, 511 Union Street, Nashville, Tennessee 37243-0607, where they will be available for public inspection during regular business hours. Such forms shall be maintained on file at the Administrative Office of the Courts for at least eight (8) years after they are received.

e. This rule [Section VII] shall become effective on December 9, 1996.

Compiler’s Notes. In its order filed November 1, 2018, the Supreme Court provided “On September 25, 2018, the Court filed an order soliciting public comments on proposed amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was October 26, 2018. The Court received only one written comment during the comment period, a comment

from the Tennessee Bar Association supporting the proposed amendments.
“After due consideration, the Court hereby adopts the amendments to Rules 10B and 11 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order.”

IN THE _____ COURT OF
_____ COUNTY, TENNESSEE

_____)
_____)
_____)
v. _____) No. _____
_____)
_____)
_____)

SUBSTITUTE JUDGE CONSENT FORM

NOTICE: WITHOUT THE CONSENT OF ALL LITIGANTS OR THEIR ATTORNEYS, THE SUBSTITUTE JUDGE SHALL NOT PRESIDE ON THIS CASE.

Part A: (to be filled out by the absent judge)

- 1. Date(s) of Absence(s): _____
- 2. Reason(s) for Absence(s) (*Judge must give specific reason*):

Signature of Absent Judge Date

Part B: (to be completed by the parties)

NOTICE TO PARTIES:
The substitute judge appointed to hear your case has not been elected by the citizens or appointed by the governor. You are not required to accept the service of a substitute judge. Without the consent of all parties the substitute judge shall not preside and the cause will be scheduled for another date. Consent must be granted by the parties who are present but may be granted by the attorney of record of any party who is not present at the beginning of the proceeding.

Part C: (to be completed by the substitute judge)

Name of Substitute Judge: _____
Oath: _____

I, _____ do solemnly swear that I will support the Constitution of the United States and the Constitution of Tennessee, and that I will administer justice without respect of persons, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge all the duties incumbent upon me as a judge to the best of my abilities.

Signature of Substitute Judge

Date

Part D: (to be completed by the clerk of the court)

I, _____, clerk of the above court certify that on the ____ day of _____, 20____, the Honorable _____ appointed the Honorable _____ to preside on the above case. I further certify that the substitute judge subscribed to the statutory oath of office before entering upon the duties of that office and that oath has been filed with the records of my office.

Clerk

[As amended by order entered November 25, 1987; by order entered November 1, 1990, effective January 1, 1991; by order entered December 14, 1994, effective January 1, 1995; by order entered February 27, 1995; by order entered October 4, 1995; by order entered December 3, 1996; by order entered January 28, 1997; by order entered February 17, 2000; by order filed June 28, 2001; by order filed December 18, 2001; by order filed October 18, 2005; by order filed October 30, 2006; by order filed June 29, 2007; by order filed January 4, 2012, effective July 1, 2012; by order filed June 26, 2012, effective July 1, 2012; and by order filed June 29, 2012, effective July 1, 2012; and by order filed December 4, 2013, effective January 1, 2014; and by order filed and effective November 1, 2018.]

Cross-References. Media guidelines, Supreme Court Rule 30.

Law Reviews. The Tennessee Court System — Circuit Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 241.

The Tennessee Court System — Criminal

Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 319.

Attorney General Opinions. Distribution of court space by presiding judge, OAG 99-049 (3/2/99).

NOTES TO DECISIONS

ANALYSIS

1. Applicability.
2. Period of Service of Special Judge.
3. Appointment of Special Judge.

1. Applicability.

Income alone is not the sole determinative of whether a person qualifies as indigent for purposes of appointment of counsel. In a complex case, a reasonable attorney fee could easily be beyond the financial ability of persons who are employed but earn modest wages. *Tenn. Dep't of Children's Servs. v. David H.*, 247 S.W.3d 651, 2006 Tenn. App. LEXIS 193 (Tenn. Ct. App. Mar. 21, 2006).

Court erred in finding that the parents, in a complex, extended dependency and neglect

case, were not indigent and finding their seven children dependent and neglected and that the parents had committed severe child abuse; that finding could have led to termination of parental rights and the parents clearly had a right to appointed counsel if they were indigent. The parents were entitled to a thorough hearing in compliance with T.C.A. § 40-14-202 to determine if they were indigent and thus, entitled to appointed counsel under *Tenn. Sup. Ct. R. 13(d)(2)(B)*. *Tenn. Dep't of Children's Servs. v. David H.*, 247 S.W.3d 651, 2006 Tenn. App. LEXIS 193 (Tenn. Ct. App. Mar. 21, 2006).

2. Period of Service of Special Judge.

If a trial judge is unable to interchange or obtain assistance from another presiding judge or the Tennessee supreme court, and therefore,

appoints the clerk and master or another judicial officer, the order of appointment should be either for a definite period of time or for a specific case. *Ferrell v. Cigna Prop. & Cas. Ins. Co.*, 33 S.W.3d 731, 2000 Tenn. LEXIS 686 (Tenn. 2000).

3. Appointment of Special Judge.

In a tax case, a clerk and master lacked authority to enter summary judgment in favor of the Tennessee commissioner of revenue under T.C.A. § 17-2-118(a), (f)(2) because the

clerk and master was not appointed or ordered to sit as a judge on the date at issue, and the requirement for exploring interchange was not satisfied where a chancellor was out of town; procedures for appointing a substitute judge were mandatory, and to hold otherwise would have rendered Tenn. Sup. Ct. R. 10, Canon 3A and *Ferrell v. Cigna Property & Cas. Ins. Co.*, 33 S.W.3d 731, 2000 Tenn. LEXIS 686 (Tenn. 2000), meaningless. *Maxwell Med., Inc. v. Chumley*, 282 S.W.3d 893, 2008 Tenn. App. LEXIS 542 (Tenn. Ct. App. Sept. 22, 2008).

Rule 12. First-Degree Murder Trial Reports and Appeals in Capital Cases.

1. Trial Judge's Report in First-Degree Murder Cases.

(A) The report, a copy of which is appended to this rule, shall be completed in its entirety in all cases, including cases remanded by the appellate court for retrial and/or resentencing, in which the defendant is convicted of first-degree murder. This includes cases in which the defendant pleads guilty to first-degree murder. In the event more than one defendant is convicted of first-degree murder, a separate report shall be completed for each defendant.

(B) For cases resulting in a trial, prior to the hearing on the motion for new trial, the defendant's counsel shall complete Section B of the report ("Data Concerning Defendant") and the district attorney general shall complete Section C ("Data Concerning the Victim, codefendants, and Accomplices"). Counsel shall submit the completed sections to the trial judge at or before the hearing on the motion for new trial. The trial court shall complete all remaining parts of the report and shall submit the report to counsel for the defendant and the district attorney general for such comments as each may desire to make concerning the accuracy of the report. Such comments must be noted and delivered to the trial court no later than ten days after the trial court rules on the motion for new trial. Such comments shall be attached to and made a part of the report.

(C) For cases resulting in a guilty plea, the defendant's counsel shall complete Section B of the report ("Data Concerning Defendant") and the district attorney general shall complete Section C ("Data Concerning the Victim, Co-Defendants, and Accomplices"). Counsel shall submit the completed sections to the trial judge within thirty (30) days, after the plea is entered. The trial court shall complete all remaining parts of the report and shall submit the report to counsel for the defendant and the district attorney general for such comments as each may desire to make concerning the accuracy of the report. Such comments must be noted and delivered to the trial court no later than ten days after receiving the report from the trial judge. Such comments shall be attached to and made a part of the report.

(D)(1) It shall be the responsibility of the trial court to compile, or cause to be compiled, all information required by this rule; to certify the accuracy of the report as to those matters within the trial court's knowledge; and to transmit the report forthwith to the Clerk of the Supreme Court, Nashville, along with a certified copy of the order disposing of the motion for new trial. This report and the order shall be transmitted to the Clerk of the Supreme Court within

fifteen (15) days after the trial court rules on the motion for new trial, or within sixty (60) days after the guilty plea is entered. A duplicate copy of the report and any comments of counsel attached thereto shall be filed with the record on appeal.

(2) The Administrative Office of the Courts is authorized to establish and implement a system for the electronic submission of the first-degree murder report required by Part 1(A) of this Rule.

Upon initial implementation, it shall be the responsibility of the trial judge to compile, or cause to be compiled, all information required by this rule; for the entry of such information into the electronic system; and to certify the accuracy of the report as to those matters within the trial court's knowledge. The report, once certified by the trial judge in the system and submitted, will be transmitted electronically to the Clerk of the Supreme Court. The trial judge must include with the electronic submission of the first-degree murder report any necessary or required documents as required by this rule by uploading such documents into the system. These may include comments of counsel and a copy of the order disposing of the motion for new trial. A certified copy of the order disposing of the motion for new trial is not required.

Upon implementation of the system, the first-degree murder report and any necessary or required documents shall be transmitted to the Clerk of the Supreme Court via the electronic system within fifteen (15) days after the trial court rules on the motion for new trial, or within sixty (60) days after the guilty plea is entered.

Upon implementation of the system, submission of all first-degree murder reports through the electronic system will be mandatory, absent exigent circumstances.

2. Appeal of Capital Case.

(A)(1) For offenses committed prior to July 1, 2019, in accord with Tenn. Code Ann. § 39-13-206(a)(1), upon affirmance by the Court of Criminal Appeals of the conviction and sentence of death, the Appellate Court Clerk shall forthwith transmit the record to the Supreme Court for immediate docketing. The Clerk shall promptly notify the parties of the docketing, the date of filing of the record in this Court, and of the times for filing and service of briefs under T.R.A.P. 29(a). The case shall proceed in accordance with the Tennessee Rules of Appellate Procedure except as otherwise required by this Rule. No party shall incorporate or adopt by reference any brief previously filed by that party in the Court of Criminal Appeals, either in whole or in part; and any brief filed in this Court shall be complete, presenting all issues, arguments and facts, without any need for reference to any brief previously filed in the Court of Criminal Appeals. A copy of the opinion of the Court of Criminal Appeals shall be appended to the appellant's brief.

(2) For offenses committed on or after July 1, 2019, in accord with Tenn. Code Ann. § 39-13-206(a)(1), upon the conviction and sentence of death becoming final in the trial court, the trial court clerk shall expeditiously file the record with the Appellate Court Clerk within the time limit provisions of Tennessee Rules of Appellate Procedure 24 and 25. The Appellate Court Clerk shall promptly notify the parties of the docketing, the date of filing of the record in this Court, and of the times for filing and service of briefs under

T.R.A.P. 29(a). The case shall proceed in accordance with the Tennessee Rules of Appellate Procedure except as otherwise required by this Rule.

(B) Prior to the setting of oral argument, the Court shall review the record and briefs and consider all errors assigned. The Court may enter an order designating those issues it wishes addressed at oral argument. The order shall afford the parties additional time for the filing of any supplemental briefs addressing these issues. In all cases, the Court will conduct the review as mandated by Tenn. Code Ann. § 39-13-206(c)(1).

3. Setting Execution Date at Conclusion of State Post-Conviction Proceedings.

Whenever a death-row prisoner has unsuccessfully pursued state post-conviction relief through appeal or application for permission to appeal to this Court, should there be no execution date in effect, the State Attorney General shall file a motion requesting that this Court set an execution date. Any response to the State's motion shall be filed within (10) days after the motion is filed.

4. Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process.

(A) Motion/Response. After a death-row prisoner has pursued at least one unsuccessful challenge to the prisoner's conviction and sentence through direct appeal, state post-conviction, and federal habeas corpus proceedings, the State Attorney General shall file a motion requesting that this Court set an execution date. The motion shall include a brief summary of the procedural history of the case demonstrating that the prisoner has completed the standard three-tier appeals process. The motion shall be considered premature if filed prior to the expiration of the time for filing a petition for writ of certiorari or a petition to rehear the denial of a petition for writ of certiorari in the United States Supreme Court.

Any response in opposition to the motion shall be filed within ten (10) days after the motion is filed and shall assert any and all legal and/or factual grounds why the execution date should be delayed, why no execution date should be set, or why no execution should occur, including a claim that the prisoner is not competent to be executed, *see Coe v. State*, 17 S.W.3d 191 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999); or a request for a certificate of commutation pursuant to Tenn. Code Ann. § 40-27-106, *see Workman v. State*, 22 S.W.3d 807 (Tenn. 2000). Unless otherwise ordered by the Court, no reply to the response is required. The Court will not delay setting an execution date pending resolution of collateral litigation in federal court. The Court will not delay setting an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

(B) Designation of Attorney of Record. In the motion and the response, the State and the prisoner shall designate an attorney of record upon whom service shall be made. In addition to the name of the attorney of record, the motion and response shall include the mailing address, E-mail address, if available, telephone number, and facsimile number, if available, of the attorney of record. The motion and response shall indicate the means by which the attorney of record prefers to be notified of orders or opinions of the Court. The Appellate

Court Clerk shall notify the attorney of record and provide him or her a copy of any and all orders and opinions issued by this Court in the matter. The attorney of record shall be responsible for notifying co-counsel and providing copies of any and all orders and opinions to co-counsel.

(C) Place of Filing/Number of Copies/Service. Regardless of the Grand Division in which the case originated, the motion, response, and all subsequent filings in the matter shall be filed with the Office of the Appellate Court Clerk in Nashville. If the motion, response or any other filing in the matter exceeds fifty pages in length, a syllabus summarizing the contents shall accompany the filing. In addition to an original copy of the motion, response or other filing, an electronic copy of the filing shall be submitted to the Clerk at the time of filing by e-mail, in Adobe .pdf format.

Filing shall not be timely unless the documents are *RECEIVED* by the Clerk within the time fixed for filing. **Mailing the papers within the time fixed for filing by certified return receipt mail or registered return receipt mail shall NOT be considered timely filing.** Copies of all filings shall be served upon the opposing attorney of record contemporaneously with their filing, either by hand delivery, facsimile, or E-mail.

(D) Computation of Time Periods. In computing the time periods for filing, the day of the event, i.e., filing of the motion or filing of the response to the motion, is not to be included in the computation. Moreover, if the last day of the period for filing is a Saturday, a Sunday, a legal holiday, or a day when the Clerk's office for filing is closed, the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday or a day when the Clerk's office is closed. In all other circumstances, Saturdays, Sundays, legal holidays, and days when the Clerk's office is closed for filing are included in the computation of the time periods.

(E) Date of Execution/Stays and Reprieves. Upon the grant of a State's motion to set an execution date, the Court shall set the date of execution no less than thirty (30) days from the date of the order granting the State's motion. Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new date of execution when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date. In the latter event, any new date of execution shall be no less than seven (7) days from the date of the order setting the new execution date.

After a date of execution is set, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court. Likewise, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

The State Attorney General shall provide a copy of any judicial or executive order staying the execution or granting a reprieve to the Office of the Clerk of the Appellate Courts in Nashville. The Clerk shall expeditiously furnish a copy of the order to the Warden of the Riverbend Maximum Security Institution. In addition, the State Attorney General shall expeditiously provide a copy of any judicial or executive order lifting or dissolving the stay or reprieve to the Office of the Appellate Court Clerk in Nashville.

[As amended by order filed November 25, 1987; by order filed June 1, 1992; by order filed October 28, 1996; by order filed October 28, 1997; by order filed May 27, 1999; by order filed October 27, 2000; by order filed March 5, 2003; by order filed December 20, 2013, effective January 1, 2014; and by order dated March 25, 2015, effective July 1, 2015; amended by order filed and effective November 27, 2017; amended by order filed and effective January 24, 2020.]

Explanatory Comment.

Section 4(C) was amended to account for developments in technology. The amendment deletes both the requirement that an original and ten (10) copies of papers be filed with the Clerk, and the requirement that a 3.6" computer diskette containing the text of the filing be filed with the Clerk. Instead, parties are directed to simultaneously file an original document and an electronic copy by e-mail. The amendment also deletes the requirement that parties furnish a hard copy of the filing to the opposing attorney, deeming an electronic copy via facsimile or e-mail sufficient.

[2015] Section 4(A) and Section 4(E) of Rule 12 were amended to clarify the standards for granting or denying a State motion to set an execution date, and for granting a death row prisoner's motion for a stay or delay of execution for pending state or federal court litigation of collateral issues.

Compiler's Notes. In its order filed November 27, 2017, the Supreme Court provided that: "On September 13, 2017, the Court filed an order soliciting written comments concerning proposed amendments to Tennessee Supreme Court Rule 12, section 1, and the First-Degree Murder Report which is appended to Rule 12. The deadline for submitting written comments was October 13, 2017. The Court received no written comments during that period."

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 12, section 1, and the First-Degree Murder Report, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

In its order dated January 24, 2020, the Supreme court provided that, "By order filed August 28, 2019, the Court solicited public comments regarding proposed amendments to Rule 12, sections 1 and 2, of the Rules of the Tennessee Supreme Court, and the First-Degree Murder Report that is appended to Rule 12. The Court received one comment from the Office of the Post-Conviction Defender ("OPCD"), as well as a letter from the Tennessee Bar Association ("TBA"). The Court has carefully considered the comment and letter received and thanks the OPCD and TBA for the same.

"After due consideration, the Court hereby amends Rule 12, sections 1 and 2, and the First-Degree Murder Report as set forth in attached Appendices A and B. The Amendments to this Rule and report shall be effective immediately upon the filing of this order."

Law Reviews. Inequalities in Capital Punishment in Tennessee Based on Race: An Analytical Study of Aggravating and Mitigating Factors in Death Penalty Cases, 31 U. Mem. L. Rev. 823 (2001).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Absence of Report.
3. Likelihood of Success.

1. Constitutionality.

The procedures prescribed in the predecessor to this rule were sufficient to afford a meaningful and realistic comparison of cases arising under the death penalty statutes so as to prevent the arbitrary or capricious imposition of that penalty. *State v. Groseclose*, 615 S.W.2d 142, 1981 Tenn. LEXIS 433 (Tenn. 1981) (decision under former Rule 47).

2. Absence of Report.

Where the entire record in a first-degree felony murder case provided a thorough basis on which the case could be reviewed, a report under this rule was not necessary and the

absence of such report did not preclude adequate appellate and comparative proportionality review. *State v. Smith*, 893 S.W.2d 908, 1994 Tenn. LEXIS 278 (Tenn. 1994), rehearing denied, 893 S.W.2d 908, 1995 Tenn. LEXIS 48 (Tenn. 1995), cert. denied, *Smith v. Tennessee*, 516 U.S. 829, 116 S. Ct. 99, 133 L. Ed. 2d 53, 1995 U.S. LEXIS 5601 (1995).

3. Likelihood of Success.

Under Tenn. Sup. Ct. R. 12(4)(E) as amended, to obtain a stay of execution, defendant had to establish a likelihood of success in establishing a feasible alternative method of execution and that trial court erred in denying his motion to amend his complaint to allege a two-drug protocol as an alternative method, but he failed to satisfy this standard; there was no direct proof that another method was available to the Tennessee Department of Corrections.

State v. Irick, 556 S.W.3d 686, 2018 Tenn.
LEXIS 638 (Tenn. Aug. 6, 2018).

Tenn. Sup. Ct. R. 12 FIRST-DEGREE MURDER REPORT

REPORT OF THE TRIAL JUDGE IN FIRST DEGREE MURDER CASES¹
IN THE _____ COURT OF _____
STATE OF TENNESSEE _____ COUNTY

Revised 1/23/2020

v. _____
Case. No. _____
Sentence of Death ____ ()
or
Life without Parole ____ ()
or
Life Imprisonment ____ ()
DEFENDANT'S NAME HERE
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE
1. a. Status of the Case: Original Retrial/Resentencing ()
Trial ()
b. Brief summary of the facts of the homicide:

c. Means/method used to cause death:
() shooting
() stabbing
() throat slashing
() drowning
() beating/blunt trauma
() strangling or suffocating
() poisoning
() bombing
() burning
() pushing from a high place
() struck by a vehicle
() child abuse/neglect
() Other:
d. Location/scene of crime:
() victim's residence
() defendant's residence or place of business/employment
() hotel/motel
() commercial establishment (bar, store, restaurant, gas station, etc.)
() street, sidewalk, or parking lot
() park or school grounds
() field, woods, or rural area
() jail or prison
() public or private vehicle
() other:
e. Motivation for the killing, if known (select all that apply):
() long term hatred of victim
() obsession/control

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first degree murder.

- () revenge/retaliation
 - () racial, religious or other bias or animosity
 - () pecuniary or other gain
 - () sexual or other pleasure or gratification for the killing
 - () jealousy
 - () silence a witness
 - () escape apprehension, trial, punishment, or confinement for another offense
 - () none apparent, but evidence suggests that action was drug-influenced
 - () non apparent/senseless killing/apparent indifference to life
 - () unreasonable self-defense or defense of others
 - () false belief due to mental illness
 - () other:
 - () unknown
 - f. First degree murder conviction type:
 - () A premeditated and intentional killing of another
 - () A killing of another in perpetration of or attempt to perpetrate any:
 - () first degree murder
 - () act of terrorism
 - () arson
 - () rape
 - () robbery
 - () burglary
 - () theft
 - () kidnapping
 - () aggravated child abuse
 - () aggravated child neglect
 - () rape of a child
 - () aggravated rape of a child
 - () aircraft piracy
 - () A killing of another committed as the result of the unlawful throwing, placing, or discharging of a destructive device or bomb
 - 2. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes () No ()
 - b. If yes, list those offenses, disposition, and punishment:
 - 3. How did the defendant plead? Guilty () Not Guilty ()
 - 4.
 - a. Did the State file a notice of intent to seek the death penalty? Yes () No ()
 - b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No ()
 - c. Did the State withdraw its notice of intent to seek the death penalty, either formally or informally? Yes () No ()
 - d. Did the State withdraw its notice to seek life imprisonment without parole either formally or informally? Yes () No ()
- If the defendant pleaded guilty with no sentencing hearing, skip to Section B.**
- 5. Was guilt determined with or without a jury? With () Without ()

6.	Did you as the "thirteenth juror" find the defendant was guilty beyond a reasonable doubt?	Yes ()	No ()
7.	Did the defendant waive jury determination of punishment?	Yes ()	No ()
8.	a. Who sentenced the defendant?	Judge ()	Jury ()
		Automatic Life Sentence ()	
	b. What sentence was imposed?	Death ()	Life Without parole ()
		Life ()	
	c. If life imprisonment was imposed, was it imposed as a result of a hung jury?	Yes ()	No ()
9.	Was victim impact evidence introduced at trial?	Yes ()	No ()
10.	Aggravating Circumstances, T.C.A. § 39-13-204(i)		
	a. Were statutory aggravating circumstances found?	Yes ()	No ()
	b. Which of the following statutory aggravating circumstances were instructed, and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks when applicable; i.e., the 1989 version or the 1995 version)		
		Instructed ()	Found ()
(1)	Youth of victim ____	()	()
(2)	Prior Convictions ____	()	()
(3)	Risk of death to others ____	()	()
(4)	Murder for remuneration ____	()	()
(5)	_____	()	()
(6)	Avoid arrest or prosecution ____	()	()
(7)	Committed in conjunction with another felony ____	()	()
(8)	Committed while in custody ____	()	()
(9)	Victim was member of law enforcement, etc. ____	()	()
(10)	Victim was judge, district attorney, etc. ____	()	()
(11)	Victim was elected official, etc ____	()	()
(12)	Mass Murder ____	()	()
(13)	Mutilation of body after death ____	()	()
(14)	Elderly or particularly vulnerable victim ____	()	()
(15)	Committed in the course of an act of terrorism ____	()	()
(16)	Committed against a pregnant woman and the defendant intentionally killed the victim knowing she was pregnant ____	()	()
(17)	Committed at random and the reasons for the killing are not obvious or easily understood ____	()	()
(18)	Sold or distributed a substance containing fentanyl, carfentanil, other opiate with intent and premeditation to commit murder	()	()

- (19) Other:² _____

- (c) Relate any relevant and material details of the aggravating circumstances found by the jury that were outside the norm, either so as to favor leniency or to favor severity of punishment: _____

11. Mitigating Circumstances, T.C.A. § 39-13-204(j)

- a. Were mitigating circumstances Yes () No ()
 raised by the evidence?
- b. If so, what mitigating circumstances were raised by the evidence?
- (1) No significant prior criminal history
 - (2) Extreme mental or emotional disturbance
 - (3) Participation or consent by victim
 - (4) Belief that conduct justified
 - (5) Minor accomplice
 - (6) Extreme duress or substantial domination
 - (7) Youth or advanced age of defendant
 - (8) Mental disease or defect or intoxication
 - (9) Other (please explain):³ _____

- c. Relate any relevant and material details of the mitigating circumstances supported by the evidence that were outside the norm, either so as to favor leniency or to favor severity of punishment: _____

- d. If tried with a jury, was the jury Yes () No ()
 instructed regarding all the
 mitigating circumstances
 requested by the defense?
 If no, list which circumstances were not included as mitigating
 circumstances and explain why such circumstances were omitted: _____

12. Was there any evidence that at the time Yes () No ()
 of the offense the defendant was under
 the influence of narcotics, dangerous
 drugs, or alcohol which actually
 contributed to the offense?
 If yes, please explain: _____

²In the space provided, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.
³In the space provided, please list all nonstatutory factors raised by the evidence.

13. Brief impression of the trial judge as to the conduct and/or demeanor of defendant at trial and sentencing that would indicate remorse, lack of remorse, mental health issues, or any other characteristics relevant to punishment:
- _____
- _____
- _____

B. DATA CONCERNING THE DEFENDANT⁴

1. Name: _____
Last, First, Middle
2. Birth Date _____
mo./date/year
3. Sex: _____
4. Marital Status:
() Never Married
() Married
() Divorced
() Spouse deceased
() Unknown
5. Race:
() American Indian or Alaska Native
() Asian
() Black or African American
() Native Hawaiian or other Pacific Islander
() White
6. Ethnicity: Is the defendant Hispanic or Latino origin:
Yes () No ()
7. Children:
Number: _____
Ages: _____
8. Parents:
Father—living? Yes () No () Unknown ()
Mother—living? Yes () No () Unknown ()
9. Education: highest Grade or Level Completed _____
Unknown ()
10. a. Was any evidence presented regarding an IQ score of the defendant?
Yes () No ()
b. If yes, What were the results?
IQ below 75
IQ 76 to 85
IQ 86-100
IQ over 100
11. a. Was the issue of defendant's intellectual disability under T.C.A. § 39-13-203 raised?
Yes () No ()
b. If so, did the court find that the defendant had an intellectual disability as defined in T.C.A. § 39-13-203(a)?
Yes () No ()
12. a. Was a psychiatric or psychological evaluation performed that is part of the trial record?
Yes () No ()
b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: _____

⁴Defense counsel may omit any information that may, if disclosed, impair the client's interests.

13. Employment record of defendant at or near time of offense, including (if known) type of job, pay, dates job held and reason for termination:

() Unknown

14. Defendant's military history, including type of discharge:

() Unknown

15. a. Does the defendant have a record of prior convictions? Yes () No ()
 b. If yes, list the offenses, the dates of the offenses, and the sentences imposed:

Offense	Date	Sentence
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

16. Was the defendant a resident of the community where the homicide occurred? Yes () No ()

17. Nature of defendant's role in offense:
 () committed homicidal act together with a co-defendant
 () primary assailant
 () other _____

18. Any other noteworthy/significant information about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim: _____ 2. Sex: _____
3. Marital Status: () Never Married
 () Married
 () Divorced
 () Spouse deceased
 () Unknown
4. Race: () American Indian or Alaska Native
 () Asian
 () Black or African American
 () Native Hawaiian or other Pacific Islander
 () White
5. Ethnicity: Is the defendant Hispanic or Latino origin: Yes () No ()
6. Children: Number: _____ Ages: _____

7. Parents: Father—living? Yes () No () Unknown ()
Mother—living? Yes () No () Unknown ()
8. Education: highest Grade or Level Completed _____
Unknown ()
9. Employment at time of offense: _____
Unknown ()
10. Describe the relationship between the defendant and the victim (e.g. family member, employer, friend, none, etc.)

11. Was the victim a resident of the community where the homicide occurred?
Yes () No ()
12. Was the victim held hostage during the crime?
_____ Yes—Less than one (1) hour
_____ Yes—More than one (1) hour
_____ No
if yes, give details: _____

13. a. Describe the physical harm and/or injuries inflicted on the victim:

- b. Was the victim tortured? If so, state the nature of the torture:

14. Co-defendants:
a. Were there any co-defendants in the trial? Yes () No ()
b. If yes, what conviction(s) and sentence(s) were imposed on them?

- c. Nature of co-defendant's role in offense:
() committed homicidal act together
() primary assailant
() other _____
- d. Any additional comments concerning co-defendant(s):

- e. Did the co-defendant(s) testify at the defendant's trial? Yes () No ()
15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant?
Yes () No ()
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation, and the disposition of such charges, if known:

- c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

D. REPRESENTATION OF THE DEFENDANT

1. Was the defendant represented by counsel at trial? Yes () No/Pro Se ()

2. If the defendant was Pro Se at trial:

- a. Was the defendant represented at any time by counsel? Yes () No ()

- b. If the defendant did have prior representation, list dates of representation and answer the remaining questions as they relate to prior counsel. Attach additional sheets if necessary to include information on each attorney.

From _____ to _____

From _____ to _____

- c. Did the defendant have elbow counsel at trial? Yes () No ()

3. How many attorneys represented the defendant?

(If more than one counsel served, or the defendant had prior counsel, other than those at trial, answer the following questions as to each counsel and attach a copy for each to this report)

4. Name of counsel: _____

5. In what role did counsel serve?

Lead/First Chair ()

Co-counsel/Second Chair ()

Elbow Counsel (pro se defendant) ()

6. Date counsel secured: _____

7. How was counsel secured (may check more than one):

a. Retained by defendant ()

b. Appointed by Court ()

c. Public Defender ()

d. Pro Bono ()

8. If counsel was appointed by court, was it because:

a. Defendant unable to afford counsel ()

b. Defendant refused to secure counsel ()

c. Elbow Counsel (pro se defendant) ()

d. Other (explain) ()

9. How many years has counsel practiced law:

a. 0 to 5 ()

b. 5 to 10 ()

c. Over 10 ()

10. What is the nature of counsel's practice?

a. Mostly civil ()

b. General ()

c. Mostly criminal ()

11. Did counsel serve throughout the trial?

Yes () No ()

- 12. If not, explain in detail: _____
- 13. Other significant data about defense representation: _____

E. GENERAL CONSIDERATIONS

- 1. a. Were jurors from the same county where offense occurred?
Yes () No ()
- b. If no, from which county were the jurors selected? _____
- c. Was a change of venue requested?
Yes () No ()
- d. If yes, was it granted?
Yes () No ()
- e. Reasons for change if granted: _____
- 2. How many alternate jurors were selected? _____
- 3. What percentage of the population, according to the most recent census, of the county from which the jury was selected is the same race as the defendant?
 - a. Under 10% ()
 - b. 10% to 25% ()
 - c. 25% to 50% ()
 - d. 50% to 75% ()
 - e. 75% to 90% ()
 - f. Over 90% ()
- 4. Were members of the defendant's race represented on the jury? Yes () No ()
- 5. Note the number of jurors/alternate jurors of each race (if race of a juror/alternate juror is unknown, please note that below as well):
Jurors Alternate Jurors
____ American Indian or Alaska Native
____ Asian
____ Black or African American
____ Native Hawaiian or other Pacific Islander
____ White
____ Unknown
- 6. Note the number of jurors/alternate jurors who are of Hispanic or Latino origin:
Jurors Alternate Jurors

- 7. Note the number of jurors/alternate jurors of each sex:
Jurors Alternate Jurors
____ Male
____ Female

F. CHRONOLOGY OF THE CASE

Elapsed Days

- 1. Date of offense _____
 - 2. Date of arrest _____
 - 3. Date trial began/guilty plea entered _____
 - 4. Date sentence imposed _____
 - 5. Date post-trial motions ruled on _____
 - 6. Date trial judge's report completed _____
 - *7. Date received by Supreme Court _____
 - *8. Date sentence review completed _____
 - *9. Total elapsed days _____
 - 10. Other _____
- *To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	State	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date _____, Judge _____
 _____ Court of _____
 _____ County
 _____ Judicial District

Rule 13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.

Section 1. Right to counsel and procedure for appointment of counsel.

(a)(1) The purposes of this rule are:

(A) to provide for the appointment of counsel in all proceedings in which an indigent party has a statutory or constitutional right to appointed counsel;

(B) to provide for compensation of appointed counsel in non-capital cases;

(C) to establish qualifications and provide for compensation of appointed counsel in capital cases, including capital post-conviction proceedings;

(D) to provide for payment of expenses incident to appointed counsel's representation;

(E) to provide for the appointment and compensation of experts, investigators, and other support services for indigent parties in criminal cases, parental rights termination proceedings, dependency and neglect proceedings, delinquency proceedings, and capital post-conviction proceedings;

(F) to establish procedures for review of claims for compensation and reimbursement of expenses; and

(G) to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

(2) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

(b) Each trial court exercising criminal jurisdiction shall maintain a roster of attorneys from which appointments will be made. However, a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.

(c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein "indigent party" or "defendant") according to the procedures and standards set forth in this rule.

(d)(1) In the following cases, and in all other cases required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be

appointed if the party is indigent and requests appointment of counsel:

(A) Cases in which an adult is charged with a felony or a misdemeanor and is in jeopardy of incarceration;

(B) Contempt of court proceedings in which the defendant is in jeopardy of incarceration;

(C) Proceedings initiated by a petition for *habeas corpus*, early release from incarceration, suspended sentence, or probation revocation;

(D) Proceedings initiated by a petition for post-conviction relief, subject to the provisions of Tennessee Supreme Court Rule 28 and Tenn. Code Ann. §§ 40-30-101 et seq.;

(E) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(F) Judicial proceedings under Tenn. Code Ann., Title 33, Chapters 3 through 8, Mental Health Law;

(G) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tenn. Code Ann., Title 34;

(H) Cases under Tenn. Code Ann. § 37-10-304 and Tennessee Supreme Court Rule 24, relative to petitions for waiver of parental consent for abortions by minors; and

(I) Proceedings initiated pursuant to Tenn. R. Crim. P. 36.1 and in which the trial court, pursuant to Tenn. R. Crim. P. 36.1(b), has determined that the motion states a colorable claim for relief.

(2) In the following proceedings, and in all other proceedings where required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and, except as provided in (C), (D), and (F) below, requests appointment of counsel:

(A) Cases in which a juvenile is charged with juvenile delinquency for committing an act which would be a misdemeanor or a felony if committed by an adult;

(B) Cases under Titles 36 and 37 of the Tennessee Code Annotated involving allegations against parents that could result in finding a child dependent or neglected or in terminating parental rights;

(C) Reports of abuse or neglect or investigation reports under Tenn. Code Ann. §§ 37-1-401 through 37-1-411. The court shall appoint a guardian ad litem for every child who is or may be the subject of such report. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court's own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. The child who is or may be the subject of a report or investigation of abuse or neglect shall not be required to request appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than to each child;

(D) Proceedings to terminate parental rights. The court shall appoint a guardian ad litem for the child, unless the termination is uncontested. The child who is or may be the subject of proceedings to terminate parental rights

shall not be required to request appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than to each child;

(E) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b); and

(F) Adoption proceedings in which the court appoints a guardian ad litem for the child or children pursuant to Public Chapter 409 of the 111th General Assembly [T.C.A. § 36-1-146].

(e)(1) Except in cases under Sections 1(d)(1)(F) proceedings under the mental health law, 1(d)(1)(G) proceedings for guardianship under Title 34, and 1(d)(2)(A) juvenile delinquency proceedings, whenever a party to any case in Section 1(d) requests the appointment of counsel, the party shall be required to complete and submit to the court an Affidavit of Indigency Form provided by the Administrative Office of the Courts, herein "AOC".

(2) Upon inquiry, the court shall make a finding as to the indigency of the party pursuant to the provisions of Tenn. Code Ann. § 40-14-202, which finding shall be evidenced by a court order.

(3) Upon finding a party indigent, the court shall enter an order appointing counsel unless the indigent party rejects the offer of appointment of counsel with an understanding of the legal consequences of the rejection.

(4)(A) When appointing counsel for an indigent defendant pursuant to Section 1(e)(3), the court shall appoint the district public defender's office, the state post-conviction defender's office, or other attorneys employed by the state for indigent defense (herein "public defender") if qualified pursuant to this rule and no conflict of interest exists, unless in the sound discretion of the trial judge appointment of other counsel is necessary. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. §§ 8-14-201 et seq.

(B) If a conflict of interest exists as provided in Tennessee Rules of Professional Conduct 1.7 or the public defender is not qualified pursuant to this rule, the court shall designate counsel from the roster of private attorneys maintained pursuant to Section 1(b).

(C) The court shall appoint separate counsel for indigent defendants having interests that cannot be represented properly by the same counsel or when other good cause is shown.

(D) The court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.

(E) When the court appoints counsel pursuant to this subsection, the order of appointment shall assess the non-refundable administrative fee provided by Tennessee Code Annotated section 37-1-126(c)(1) or section 40-14-103(b)(1). Additionally the court shall consider the financial ability of the indigent party to defray a portion or all of the cost for representation by the public defender or a portion or all of the costs associated with the provision of court appointed

counsel as provided by Tennessee Code Annotated sections 8-14-205(d)(1); 37-1-126(c)(2); or 40-14-103(b)(2). If the court finds the indigent party is financially able to defray a portion or all the cost of the indigent party's representation, the court shall enter an order directing the indigent party to pay into the registry of the clerk of such court such sum as the court determines the indigent party is able to pay as specified by Tennessee Code Annotated section 40-14-202(e).

(5) Appointed counsel shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by a court. *See* Tenn. Sup. Ct. R. 14 (setting out the procedure for withdrawal in the Court of Appeals and Court of Criminal Appeals); Tenn. Sup. Ct. R. 8, RPC 1.16.

(f)(1) Indigent parties shall not have the right to select appointed counsel. If an indigent party refuses to accept the services of appointed counsel, such refusal shall be in writing and shall be signed by the indigent party in the presence of the court.

(2) The court shall acknowledge thereon the signature of the indigent party and make the written refusal a part of the record in the case. In addition, the court shall satisfy all other applicable constitutional and procedural requirements relating to waiver of the right to counsel. The indigent party may act pro se without the assistance or presence of counsel only after the court has fulfilled all lawful obligations relating to waiver of the right to counsel. [As amended by order filed June 25, 2013; and by order filed June 28, 2019, effective upon filing.]

Explanatory Comment: Section 1(d)(2)(F) has been added pursuant to Public Chapter 409 of the 111th General Assembly. Section 1(e)(1) has been revised for simplicity and organization. Section 1(e)(2) emphasizes that the finding of indigency must be evidenced by a court order. Section 1(e)(4)(A) is stricter than the former rule and emphasizes that trial courts "shall" appoint the public defender to represent criminal defendants unless a conflict of interest exists or in the sound discretion of the trial court, appointment of another counsel is necessary. Section 1(e)(4)(D) includes a specific standard that must be satisfied before counsel may refuse an appointment. Section 1(e)(4)(E) emphasizes that courts have a statutory duty to assess the administrative fee when appointing counsel as well as a statutory duty to consider whether the indigent party can afford to defray a portion or all of the costs of representation.

Section 1(e)(5) clarifies that appointed counsel is obligated to represent the indigent party until a court allows counsel to withdraw. Section 1(f) delineates the rights of indigent parties and the obligations of courts when an indigent party chooses to proceed without counsel.

Compiler's Notes. Supreme Court order dated June 28, 2019 provided that: "Pursuant to Senate Bill 559/House Bill 628, the General Assembly added a new section to Tennessee Code Annotated, Title 36, Chapter 1, Part 1. Based upon this legislation, the Court has determined that it is appropriate to amend Tennessee Supreme Court Rule 13, sections 1 and 2."

"After due consideration, the Court hereby amends Rule 13 as set out in the Appendix to this Order. These amendments shall be effective immediately upon the filing of this Order."

Section 2. Compensation of counsel in non-capital cases.

(a)(1) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for services rendered as provided in this rule. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be reasonable.

(2) These limitations apply to compensation for services rendered in each court: municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; Tennessee Supreme Court; and United States Supreme Court.

(b) Co-counsel or associate attorneys in non-capital cases shall not be compensated.

(c) The hourly rate for appointed counsel in non-capital cases shall not exceed fifty dollars (\$50) per-hour for time reasonably spent preparing the case and time reasonably spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(d)(1) The maximum compensation allowed shall be determined by the original charge or allegations in the case. Except as provided in section 2(e), the compensation allowed appointed counsel for services rendered in a non-capital case shall not exceed the following amounts:

(2) Five hundred dollars (\$500) for:

(A) Contempt of court cases where an adult or a juvenile is in jeopardy of incarceration;

(B) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(C) Judicial proceedings under Tennessee Code Annotated, Title 33, Chapters 3 through 8, Mental Health Law;

(D) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tennessee Code Annotated, Title 34;

(E) Cases under Tenn. Code Ann. § 37-10-304 and Tennessee Supreme Court Rule 24, relative to petitions for waiver of parental consent for abortions by minors;

(F) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b); and

(G) Guardian ad litem representation for the child or children in adoption cases in accordance with section 1(d)(2)(F). Pursuant to Public Chapter 409 of the 111th General Assembly [T.C.A. § 36-1-146], there is a rebuttable presumption that the guardian ad litem's fees shall be divided equally between the parties, excluding the person being adopted.

(3) One thousand dollars (\$1,000) for:

(A) Cases in which an adult or a juvenile is charged with a misdemeanor and is in jeopardy of incarceration;

(B) Direct and interlocutory appeals in the Court of Appeals or Court of Criminal Appeals;

(C) Direct and interlocutory appeals in the Tennessee Supreme Court;

(D) Cases in which a defendant is applying for early release from incarceration or a suspended sentence;

(E) Non-capital post-conviction and *habeas corpus* proceedings;

(F) Probation revocation proceedings;

(G) All other non-capital cases in which the indigent party has a statutory or constitutional right to be represented by counsel.

(4) One thousand five hundred dollars (\$1,500) for:

(A) Preliminary hearings in general sessions and municipal courts in which an adult is charged with a felony;

(B) Cases in which a juvenile is charged with a non-capital felony;

(5)(A) Two thousand dollars (\$2,000) for cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony;

(B) Three thousand dollars (\$3,000) for cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony;

(6) Maximum compensation for juvenile dependency and neglect proceedings and termination of parental rights proceedings is as follows:

(A) One thousand dollars (\$1,000) for:

(i) Dependent or neglected child cases, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(B) One Thousand, Two Hundred Fifty Dollars (\$1,250) for:

(i) Dependent or neglected child cases, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews and permanency hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings; and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(D) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings;

(C) One thousand, Two Hundred Fifty dollars (\$1,250) for:

(i) Proceedings against parents in which allegations against the parents could result in termination of parental rights;

(ii) Guardian ad litem representation in termination of parental rights

cases in accordance with section 1(d)(2)(D); and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group in termination of parental rights cases.

(e)(1) Notwithstanding the provisions of section (2)(d), an amount in excess of the maximum, subject to the limitations of section (2)(e)(3), may be sought by filing a motion in the court in which representation is provided. The motion shall include specific factual allegations demonstrating that the case is complex or extended. The court shall enter an order which evidences the action taken on the motion. The following, while neither controlling nor exclusive, indicate the character of reasons that may support a complex or extended certification:

(A) The case involved complex scientific evidence and/or expert testimony;

(B) The case involved multiple defendants and/or numerous witnesses;

(C) The case involved multiple protracted hearings;

(D) The case involved novel and complex legal issues.

(E) If the motion is granted, an order shall be forwarded to the Director of the AOC (herein "director") certifying the case as complex or extended. The order shall either recite the specific facts supporting the finding or incorporate by reference and attach the motion which includes the specific facts supporting the finding. To qualify for payment under this section, the order certifying the claim as extended or complex must be signed contemporaneously with the court's approval of the claim. *Nunc pro tunc* certification orders are not sufficient to support payment under this section.

(2) All payments under Section 2(e)(1) must be submitted to the director for approval. If a payment under Section 2(e)(1) is not approved by the director, the director shall transmit the claim to the chief justice for disposition. The determination of the chief justice shall be final.

(3) Upon approval of the complex or extended claim by the director or the chief justice, the following maximum amounts apply:

(A) One thousand dollars (\$1,000) in those categories of cases where the maximum compensation is otherwise five hundred dollars (\$500);

(B) Except as provided in Section (2)(e)(3)(D), two thousand dollars (\$2,000) in those categories of cases where the maximum compensation is otherwise one thousand dollars (\$1,000);

(C) Two thousand five hundred dollars (\$2,500) in those categories of cases where the maximum compensation is otherwise one thousand two hundred fifty dollars (\$1,250).

(D) Four thousand dollars (\$4,000) in cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony; and

(E) Six thousand dollars (\$6,000) in cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony. Where the felony charged is first-degree murder, the director may waive the six thousand dollar (\$6,000) maximum if the order demonstrates that extraordinary circumstances exist and failure to waive the maximum would result in undue hardship.

(f) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a

document.

(g) Counsel appointed or assigned to represent indigents shall not be paid for any time billed in excess of 2,000 hours per calendar year unless, in the opinion of the Administrative Director, an attorney has made reasonable efforts to comply with this limitation, but has been unable to do so, in whole or in part, due to the attorney's representation pursuant to Section 3 of this Rule. It is the responsibility of private counsel to manage their billable hours in compliance with the annual maximum. [As amended by order filed March 5, 2013; by order filed September 19, 2013, effective January 1, 2014; amended by order filed July 2, 2018, effective July 1, 2018; and by order filed June 28, 2019, effective upon filing.]

Explanatory Comment: Section 2(b) unequivocally provides that only one attorney will be compensated in non-capital cases. Section 2(c) clarifies that appointed counsel will not be compensated for time spent on Board of Professional Responsibility complaints arising from appointments. Section 2(d) has been reorganized for simplicity and clarity. Compensation rates for counsel appointed in juvenile, dependency and neglect, and termination of parental rights cases are now contained in Section 2(d)(6). Section 2(d)(6) further defines the dispositional and post-dispositional phases at which compensation is appropriate and also compensates attorneys appointed pursuant to Tennessee Supreme Court Rule 40(e)(2). Section 2(d)(2)(G) has been added pursuant to Public Chapter 409 of the 111th General Assembly. A claim in an adoption proceeding is separate from a claim in a termination of parental rights proceeding, even if the court appoints the same guardian ad litem in the adoption proceeding. Section 2(e)(1) further delineates the procedure and factors supporting certification of a case as complex or extended, including the mandatory requirement that the order certifying the claim be submitted to the AOC contemporaneously with the claim requesting complex or extended compensation. Section 2(e)(2) reiterates that approval of the director or the chief justice is required and that the determination of the chief justice is final. Section 6 of this rule sets out in more detail the

claims review process. Section 2(e)(3)(A)-(D) has been revised to simplify and clarify the language. Section 2(e)(3)(D) has been revised to limit waiver of the \$4,000 maximum to first-degree murder cases, rather than all homicide cases. Section 2(f) precludes compensating attorneys for time spent traveling to and from a clerk's office in another county for the sole purpose of hand-delivering or filing documents.

Compiler's Notes. Supreme Court order dated July 2, 2018 provided that: "By Order filed June 29, 2018, the Court amended Rule 13, sections 2 and 3 of the Rules of the Tennessee Supreme Court in the form set out in the appendix to that Order, effective July 1, 2018. It has come to the Court's attention that there was a typographical error in amended Rule 13, Section 2(e)(3)(E), as contained in that appendix. It is therefore ordered that the appendix to the Order filed June 29, 2018 is withdrawn, and the corrected appendix attached to this Order is substituted in its place."

Supreme Court order dated June 28, 2019 provided that: "Pursuant to Senate Bill 559/ House Bill 628, the General Assembly added a new section to Tennessee Code Annotated, Title 36, Chapter 1, Part 1. Based upon this legislation, the Court has determined that it is appropriate to amend Tennessee Supreme Court Rule 13, sections 1 and 2."

"After due consideration, the Court hereby amends Rule 13 as set out in the Appendix to this Order. These amendments shall be effective immediately upon the filing of this Order."

NOTES TO DECISIONS

1. In General.

Post-judgment motion by a guardian ad litem to certify a child custody matter as extended and complex did not violate a parent's constitutional rights, due process, and fundamental fairness because the motion included specific

factual allegations demonstrating that the case was complex and extended. Furthermore, the motion was not substantive in nature and was purely an administrative filing to secure payment. In re M.M., — S.W.3d —, 2019 Tenn. App. LEXIS 295 (Tenn. Ct. App. June 11, 2019).

Section 3. Minimum qualifications and compensation of counsel in capital cases. (a) For purposes of this rule, a capital case is a case in which a defendant has been charged with first-degree murder and a notice of intent to seek the death penalty, as provided in Tenn. Code Ann. § 39-13-208 and Tennessee Rule of Criminal Procedure 12.3(b), has been filed and no order withdrawing the notice has been filed. Non-capital compensation rates apply to services rendered by appointed counsel after the date the notice of intent to seek the death penalty is withdrawn.

(b)(1) The court shall appoint two attorneys to represent a defendant at trial in a capital case. Both attorneys appointed must be licensed in Tennessee and have significant experience in Tennessee criminal trial practice, unless in the sound discretion of the trial court, appointment of one attorney admitted under Tennessee Supreme Court Rule 19 is appropriate. The appointment order shall specify which attorney is “lead counsel” and which attorney is “co-counsel.” Whenever possible, a public defender shall serve as and be designated “lead counsel.”

(2) If the notice of intent to seek the death penalty is withdrawn at least thirty (30) days prior to trial, the trial court shall enter an order relieving one of the attorneys previously appointed. In these circumstances, the trial court may grant the defendant, upon motion, a reasonable continuance of the trial.

(3) If the notice is withdrawn less than thirty (30) days prior to trial, the trial court may either enter an order authorizing the two attorneys previously appointed to remain on the case for the duration of the present trial, or enter an order relieving one of the attorneys previously appointed and granting the defendant, upon motion, a reasonable continuance of the trial.

(c) Lead counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;

(2) have regularly participated in criminal jury trials for at least five years;

(3) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(4) have at least one of the following:

(A) experience as lead counsel in the jury trial of at least one capital case;

(B) experience as co-counsel in the trial of at least two capital cases;

(C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case;

(D) experience as lead counsel or sole counsel in at least three murder jury trials or one murder jury trial and three felony jury trials; or

(E) experience as a judge in the jury trial of at least one capital case.

(5) The provisions of this subsection requiring lead counsel to have participated in criminal jury trials for at least five years, rather than three years, and requiring six (6) hours of specialized training shall become effective January 1, 2006.

(d) Co-counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to

practice *pro hac vice*;

(2) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(3) have at least one of the following qualifications:

(A) qualify as lead counsel under (c) above; or

(B) have experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.

(4) The provisions of this subsection requiring six (6) hours of specialized training shall become effective January 1, 2006.

(e) Attorneys who represent the defendant in the trial court in a capital case may be designated to represent the defendant on direct appeal, provided at least one trial attorney qualifies as new appellate counsel under Section 3(g) of this rule and both attorneys are available for appointment. However, new counsel will be appointed to represent the defendant if the trial court, or the court in which the case is pending, determines that appointment of new counsel is necessary to provide the defendant with effective assistance of counsel or that the best interest of the defendant requires appointment of new counsel.

(f) If new counsel are appointed to represent the defendant on direct appeal, both attorneys appointed must be licensed in Tennessee, unless in the sound discretion of the judge, appointment of one attorney admitted under Tennessee Supreme Court Rule 19 is appropriate.

(g) Appointed counsel on direct appeal, regardless of any prior representation of the defendant, must have three years of litigation experience in criminal trials and appeals, and they must have at least one of the two following requirements: experience as counsel of record in the appeal of a capital case; or experience as counsel of record in the appeal of at least three felony convictions within the past three years and a minimum of six hours of specialized training in the trial and appeal of capital cases.

(h) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as appointed appellate counsel, or have trial and appellate experience as counsel of record in state post-conviction proceedings in three felony cases, two homicide cases, or one capital case. Counsel also must have a working knowledge of federal *habeas corpus* practice, which may be satisfied by six hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must not have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

(i) No more than two attorneys shall be appointed to represent a death-row inmate in a proceeding regarding competency for execution. See *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). At least one of the attorneys appointed shall be qualified as post-conviction counsel as set forth in Section 3(h).

(j) Appointed counsel in capital cases, other than public defenders, shall be entitled to reasonable compensation as determined by the court in which such

services are rendered, subject to the limitations of this rule, which limitations are declared to be reasonable. Compensation shall be limited to the two attorneys actually appointed in the case. Appointed counsel in a capital case shall submit claims in accordance with Section 6 of this rule.

(k) Hourly rates for appointed counsel in capital cases shall be as follows:

- (1) Lead counsel (\$100);
- (2) Co-counsel (\$80);
- (3) Post-conviction counsel (\$80);
- (4) Counsel appointed pursuant to Section 3(i) (\$80);

(l) For purposes of this rule, the hourly rate includes time reasonably spent preparing the case and time reasonably spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(m) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document. [As amended by order filed July 29, 2018, effective July 1, 2018.]

Explanatory Comment: Section 3(a) clarifies that even if a trial court allows two appointed attorneys to remain on a case, under Section 3(b)(3), after a notice of intent to seek the death penalty is withdrawn, counsel will be compensated at non-capital rates for services rendered after the date the notice is withdrawn. Section 3(b)(1) has been revised to require that the appointment order must specify lead and co-counsel and that the public defender must serve and be designated lead counsel whenever possible. Section 3(b)(2) and (3) previously appeared as Section 3(l) of Rule 13. Section 3 now permits former prosecutors and judges with appropriate experience to be appointed counsel in capital cases. Section 3(c)(2) has been revised to require five years participation in criminal jury trials, rather than three years representation of defendants in criminal jury trials. Section 3(c)(3) has been revised to enhance the educational requirements for appointed counsel. Section 3(c)(4)(E) has been revised to include an experience requirement applicable only to former judges. Section 3(i) has been revised to clarify that its scope is limited to affording compensation to appointed

counsel in a proceeding challenging the inmate's competency to be executed. Section 3(k)(7) provides that attorneys appointed in competency proceedings will be compensated at the same \$80 rate applicable in other capital post-conviction proceedings. Section 3(l) clarifies that appointed counsel will not be compensated for time spent defending against a Board of Professional Responsibility action that arises from the appointment. Section 3(m) precludes compensating attorneys for time spent driving to and from a clerk's office in another county for the sole purpose of hand-delivering or filing a document.

Compiler's Notes. Supreme Court order dated July 2, 2018 provided that: "By Order filed June 29, 2018, the Court amended Rule 13, sections 2 and 3 of the Rules of the Tennessee Supreme Court in the form set out in the appendix to that Order, effective July 1, 2018. It has come to the Court's attention that there was a typographical error in amended Rule 13, Section 2(e)(3)(E), as contained in that appendix. It is therefore ordered that the appendix to the Order filed June 29, 2018 is withdrawn, and the corrected appendix attached to this Order is substituted in its place."

Section 4. Payment of expenses incident to representation.

(a)(1) Appointed counsel, experts, and investigators may be reimbursed for certain necessary expenses directly related to the representation of indigent parties.

(2) The services or time of a paralegal, law clerk, secretary, legal assistant, or other administrative assistants shall not be reimbursed. Normal overhead expenses also shall not be reimbursed.

(3) The following expenses will be reimbursed without prior approval if reasonably necessary to the representation of the indigent party:

- (A) Long distance telephone charges, if supported by a log showing the date of the call, the person or office called, the purpose of the call, and the

duration of the call stated in one-tenth ($\frac{1}{10}$) hour segments;

(B) Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities;

(C) Lodging where an overnight stay is required at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates;

For in-state rates: www.state.tn.us/finance/act/travel.html

For out-of-state rates: www.state.tn.us/finance/act/policy.html

(D) Meals in accordance with the Judicial Department travel regulations if supported by a receipt, where an overnight stay is required;

(E) Parking at actual costs up to ten dollars per day if supported by a receipt;

(F) Photocopying — Black and White Copies —

(i) In-house copying at a rate not to exceed seven cents (\$0.07) per page.

(ii) Actual cost of outsourced copying if supported by a receipt, at a rate not to exceed ten cents (\$0.10) per page.

(iii) Actual cost of providing to client a copy of appellate briefs and opinion.

(iv) The cost of providing to the indigent party a copy of the court file or transcript will not be reimbursed once the appeal is complete because the original file and transcript belong to the client.

(v) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed \$500.

(G) Photocopying — Color Copies —

(i) In-house color copying at a rate not to exceed one dollar (\$1.00) per page;

(ii) Actual cost of outsourced color copies at a rate not to exceed \$1.00 per page if supported by a receipt;

(iii) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed \$500.

(H) Computerized Research at actual cost for case-related legal and internet research if supported by receipts. If actual costs are not incurred, compensation will be limited to time spent conducting the search. Pro rata cost of subscription[s] will not be paid.

(I) Miscellaneous expenses such as postage, commercial delivery service having computer tracking capacity, film, or printing will be compensated at actual cost, not to exceed the fair and reasonable market value, if accompanied by a receipt. Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total miscellaneous expenses will exceed \$250.

(J) Expenses relating to improving the indigent party's appearance, including but not limited to expenses for dental plates, haircuts, clothing and cleaning charges for clothing, are not reimbursable.

(K) Appellate Record—Actual expenses for an electronic copy of the appellate record (excluding exhibits) and of any transcripts on appeal purchased from the Appellate Court Clerk's Office, not to exceed \$100.00.

(b) Expenses not listed in Section 4(a), including travel outside the state, will be reimbursed only if prior authorization is obtained from the court in which the representation is rendered and prior approval is obtained from the director.

(1) Authorization of expenses shall be sought by motion to the court.

(2) The motion shall include both an itemized statement of the estimated or anticipated costs and specific factual allegations demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party.

(3) The court shall enter an order that evidences the action taken on the motion. If the motion is granted, the order shall either recite the specific facts demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party or incorporate by reference and attach the defense motion that includes the specific facts demonstrating that finding.

(4) The order and any attachments shall be submitted to the director for prior approval before any expenses are incurred.

(c) The director is hereby authorized to reimburse the Department of Children's Services at the Judicial Department rate for the expense of transcripts in termination of parental rights appeals without obtaining prior approval by court order in each case.

(d) Foreign Language Interpreters and Translators.

The appointment of interpreters and/or translators, and the compensation by the AOC for costs associated with an interpreter's and/or translator's services, are governed by Rule 42, Rules of the Tennessee Supreme Court. [As amended by order filed June 27, 2012, effective July 1, 2012; and by order filed February 20, 2013, effective April 1, 2013.]

Explanatory Comment: Section 4(a) provides uniform guidelines and certainty as to expenses that will be reimbursed and delineates the documentation that must accompany a claim for reimbursement. Section 4(a)(3) permits reimbursement without prior approval of certain expenses and is intended to eliminate time previously spent by attorneys and judges considering such expenses. Section 4(a)(3)(F)(iv) clarifies that attorneys will not be reimbursed for the costs of copying the record since the record belongs to the indigent party.

Section 4(b) delineates the expenses for which prior approval is required and sets out the requirements and procedure for obtaining prior approval. Section 4(b) dispenses with the former requirement that prior approval be obtained from both the director and the chief justice and makes prior approval of the director essential and final. Section 4(d) cross-references Tenn. Sup. Ct. R. 42, which provides the mechanism and method for compensating foreign language interpreters and translators.

NOTES TO DECISIONS

1. In General.

Approval of a motion by guardian ad litem (GAL) to obtain funds for expert witness was appropriate as the motion was not substantive in nature and was instead an administrative filing to secure payment for the expert to ensure effective representation of a minor child, and the resulting order was necessary to effec-

uate the request. Additionally, any effort by the GAL to file the motion under seal was done in accordance with the court's order requiring that a parent's mental health report and information contained therein remain confidential. In re M.M., — S.W.3d —, 2019 Tenn. App. LEXIS 295 (Tenn. Ct. App. June 11, 2019).

Section 5. Experts, investigators, and other support services. (a)(1) In the trial and direct appeal of all criminal cases in which the defendant is entitled to appointed counsel and in the trial and appeals of post-conviction proceedings in capital cases involving indigent petitioners, the court, in an *ex parte* hearing, may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected. If such determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the payment or reimbursement of reasonable and necessary expenses by the director. *See* Tenn. Code Ann. § 40-14-207(b); *State v. Barnett*, 909 S.W.2d 423 (Tenn. 1995); *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995).

(2) In non-capital post-conviction proceedings, funding for investigative, expert, or other similar services shall not be authorized or approved. *See Davis v. State*, 912 S.W.2d 689 (Tenn. 1995).

(b)(1) Every effort shall be made to obtain the services of a person or entity whose primary office of business is within 150 miles of the court where the case is pending. If the person or entity proposed to provide the service is not located within the 150-mile radius, the motion shall explain the efforts made to obtain the services of a provider within the 150-mile radius.

(2) Any motion seeking funding for expert or similar services shall itemize:

(A) the nature of the services requested;

(B) the name, address, qualifications, and licensure status, as evidenced by a curriculum vitae or resume, of the person or entity proposed to provide the services;

(C) the means, date, time, and location at which the services are to be provided; and

(D) a statement of the itemized costs of the services, including the hourly rate, and the amount of any expected additional or incidental costs.

(3) Any motion seeking funding for investigative or other similar services shall itemize:

(A) the type of investigation to be conducted;

(B) the specific facts that suggest the investigation likely will result in admissible evidence;

(C) an itemized list of anticipated expenses for the investigation;

(D) the name and address of the person or entity proposed to provide the services; and

(E) a statement indicating whether the person satisfies the licensure requirement of this rule.

(4) If a motion satisfies these threshold requirements, the trial court must conduct an *ex parte* hearing on the motion and determine if the requested services are necessary to ensure the protection of the defendant's constitutional rights.

(c)(1) Funding shall be authorized only if, after conducting a hearing on the motion, the court determines that there is a particularized need for the requested services and that the hourly rate charged for the services is reasonable in that it is comparable to rates charged for similar services.

(2) Particularized need in the context of criminal trials and appeals is established when a defendant shows by reference to the particular facts and circumstances that the requested services relate to a matter that, considering the inculpatory evidence, is likely to be a significant issue in the defense at trial and that the requested services are necessary to protect the defendant's right to a fair trial. See, *Barnett*, 909 S.W.2d at 423.

(3) Particularized need in the context of capital post-conviction proceedings is established when a petitioner shows, by reference to the particular facts and circumstances of the petitioner's case, that the services are necessary to establish a ground for post-conviction relief and that the petitioner will be unable to establish that ground for post-conviction relief by other available evidence. See *Owens*, 908 S.W.2d at 928.

(4) Particularized need cannot be established and funding requests should be denied where the motion contains only:

(A) undeveloped or conclusory assertions that such services would be beneficial;

(B) assertions establishing only the mere hope or suspicion that favorable evidence may be obtained;

(C) information indicating that the requested services relate to factual issues or matters within the province and understanding of the jury; or

(D) information indicating that the requested services fall within the capability and expertise of appointed counsel. See, e.g., *Barnett* 909 S.W.2d at 430; *Caldwell v. Mississippi*, 472 U.S. 320, 323 n.1 (1985); *State v. Abraham*, 451 S.E.2d 131, 149 (N.C. 1994).

(d)(1) The director and/or the chief justice shall maintain uniformity as to the rates paid individuals or entities for services provided to indigent parties. Appointed counsel shall make every effort to obtain individuals or entities who are willing to provide services at an hourly rate less than the maximum. Although not an exclusive listing, compensation for individuals or entities providing the following services shall not exceed the following maximum hourly rates:

(A) Accident Reconstruction	\$115.00
(B) Medical Services/Doctors	\$250.00
(C) Psychiatrists	\$250.00
(D) Psychologists	\$150.00
(E) Investigators (Guilt/Sentencing)	\$50.00
(F) Mitigation Specialist	\$65.00
(G) DNA Expert	\$200.00
(H) Forensic Anthropologist	\$125.00
(I) Ballistics Expert	\$75.00
(J) Fingerprint Expert	\$75.00
(K) Handwriting Expert	\$75.00

(2) For persons or entities compensated at a rate of one hundred dollars (\$100) per hour or more, time spent traveling shall be compensated at no greater than fifty percent (50%) of the approved hourly rate.

(3) Investigators shall not be compensated unless licensed by the Private Investigation and Polygraph Commission of Tennessee or exempted from this licensure requirement, except when an investigator licensed in another state is authorized by a court in Tennessee to conduct an investigation in that other

state.

(4) In a post-conviction capital case, a trial court shall not authorize more than a total of \$20,000 for *all* investigative services, unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

(5) In a post-conviction capital case, a trial court shall not authorize more than a *total of* \$25,000 for the services of *all* experts unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

(6) Expenses shall not be authorized or approved for expert tests or expert services if the results or testimony generated from such tests or services will not be admissible as evidence.

(e)(1) If the requirements of Sections 5(c) and (d) are satisfied and the motion is granted, the authorization shall be evidenced by a signed order of the court. Unless otherwise indicated in the order, the amount authorized includes both fees and necessary expenses under Section 4(a).

(2) The order shall include a finding of particularized need and the specific facts that demonstrate particularized need as well as the information required by Section 5(b)(1) or (b)(2).

(3) The court may satisfy the requirements of subsection (e)(2) above by incorporating and attaching that portion of the defense motion that includes the specific facts supporting the finding of particularized need.

(4) Once the services are authorized by the court in which the case is pending, the order and any attachments must be submitted to the director for prior approval. Claims for these services may not be submitted electronically.

(5) If the director denies prior approval of the request, the claim shall also be transmitted to the chief justice for disposition and prior approval. The determination of the chief justice shall be final. [As amended by order filed February 6, 2013, effective July 1, 2013.]

Explanatory Comment: Section 5(a)(1) contains the language that previously appeared as Section 5(a). Section 5(a)(2) unequivocally provides that funding for investigative, expert, or other similar services is not available in non-capital post-conviction proceedings. Section 5(b)(1) explains that counsel must make “every effort” to obtain the services of experts, investigators or others who are located within 150 miles of the court where the case is pending. Section 5(b)(2) delineates the information that must be included in or submitted with a motion requesting funding for expert or similar services. Section 5(b)(3) delineates the information that must be included in or submitted with a motion requesting funding for investigative or similar services. Section 5(c) has been revised for clarity and includes in subsections (c)(1)-(4) definitions of particularized need and the standards governing a trial court’s consideration of funding requests. Section 5(d) has been revised to provide certainty and guidance to attorneys, service providers, and trial courts. Section 5(d)(1) establishes maximum hourly

rates for certain services, instructs the director and the chief justice to maintain state-wide uniformity as to the rates paid for services, and directs appointed counsel to seek to retain individuals and/or entities willing to provide services at a rate less than the maximum. Section 5(d)(2) establishes permissible compensation rates for travel for experts paid in excess of \$100 per hour. Section 5(d)(3) establishes the licensure requirements for investigators. Section 5(d)(4) and (5) impose maximum limits on the amounts that may be approved in capital post-conviction proceedings and permit funding in excess of these amounts only upon clear and convincing evidence that extraordinary circumstances exist. Section 5(d)(6) precludes funding for expert tests or services if the results of the tests or the expert’s testimony is per se inadmissible. Section 5(e)(1)-(3) delineates the information that must be included in or attached to orders authorizing funding. Section 5(e)(4)-(5) sets out the procedure that must be followed in obtaining prior approval of the request. Section 5(e)(5) provides that only those claims

denied by the director will be submitted to the chief justice for disposition. This changes prior law which required the chief justice to review every request for funding involving an hourly

rate in excess of \$150 or an overall amount in excess of \$5,000, even those requests approved by the director.

NOTES TO DECISIONS

ANALYSIS

1. No Particularized Need.
2. Post-conviction Relief.
3. Requirements.

1. No Particularized Need.

Trial court did not abuse its discretion by denying defendant's motion seeking the assistance of a crime scene expert where the motion failed to establish particularized need, as it made only unsupported allegations that the expert was necessary to counter proof offered by the State. During cross-examination of the State's witnesses, defendant was able to highlight the lack of blood at the home as well as the presence of unidentified foot and palm prints at the storage unit even without an expert. *State v. Willis*, 496 S.W.3d 653, 2016 Tenn. LEXIS 405 (Tenn. July 6, 2016), cert. denied, *Willis v. Tennessee*, 197 L. Ed. 2d 466, 137 S. Ct. 1224, — U.S. —, 2017 U.S. LEXIS 1710 (U.S. Mar. 6, 2017).

Trial court did not abuse its discretion by denying defendant's motion seeking the assistance of a false confession expert where the motion failed to establish particularized need, as it made only unsupported allegations that the expert was necessary to counter proof offered by the State. During cross-examination of the State's witnesses, defendant was able to bring out the circumstances of his confession. *State v. Willis*, 496 S.W.3d 653, 2016 Tenn. LEXIS 405 (Tenn. July 6, 2016), cert. denied, *Willis v. Tennessee*, 197 L. Ed. 2d 466, 137 S. Ct. 1224, — U.S. —, 2017 U.S. LEXIS 1710 (U.S. Mar. 6, 2017).

Based on the record defendant failed to show a particularized need for a mitigation expert because the record contained only trial court's order denying funding, which justified its decision on the basis that it had already appointed two lawyers and a fact investigator, any one of

whom was capable of conducting an investigation into mitigation evidence, and that the appointment of a mitigation expert would not assist defendant in any way. *State v. Jones*, 568 S.W.3d 101, 2019 Tenn. LEXIS 19 (Tenn. Jan. 30, 2019), cert. denied, *Jones v. Tennessee*, 205 L. Ed. 2d 144, 140 S. Ct. 262, — U.S. —, 2019 U.S. LEXIS 5344 (U.S. Oct. 7, 2019).

2. Post-conviction Relief.

Defendant failed to prove that trial counsel was ineffective because, although counsel was deficient in failing to seek an investigator based upon counsel's misunderstanding of the law, defendant failed to establish prejudice from trial counsel's deficient performance in this regard. *Thompson v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 754 (Tenn. Crim. App. Nov. 25, 2019).

3. Requirements.

Post-conviction court did not err in denying defendant's request for funding for an investigator, despite defendant's indigency, because defendant was not facing capital punishment. *Bailey v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 429 (Tenn. Crim. App. June 19, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 549 (Tenn. Sept. 21, 2020).

Defense established a particularized need warranting the release of funds to hire an additional medical expert because the defense sufficiently established that medical expert testimony was necessary to challenge the adequacy of the victim's physical examination, to challenge the opinions and conclusions of an expert in general pediatric medicine, and to challenge the State's theory of the case that the victim had suffered prolonged sexual abuse between the ages of five and 10; however, the error in failing to release the funds was harmless. *State v. Breeden*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 627 (Tenn. Crim. App. Sept. 21, 2020).

Section 6. Review of claims for compensation and reimbursement of expenses. (a) (1) All claims for attorney compensation and expenses shall be submitted utilizing the system established by the AOC for electronic submission. Claims of two hundred dollars (\$200.00) or more for attorney compensation and expenses shall be electronically submitted, and shall be reviewed and approved by the judge who presided over final disposition of the case prior to payment by the AOC. Electronic claims that total less than two hundred dollars (\$200) shall be exempt from the judicial review and approval requirement; such claims, however, shall be subject to the AOC's examination and

audit pursuant to this section.

(2) Time spent by counsel on a single case or proceeding shall be included in a single claim for compensation.

(3) Claims shall be supported by a copy of the court order appointing counsel or authorizing the expenditure and, in the case of expenses requiring prior approval, a copy of the approval of the director and/or the chief justice.

(4) Appointed counsel in a capital case shall file interim claims. Interim claims shall be filed at least every 180 days, but no more frequently than every 30 days. Any portion of a claim requesting payment for services rendered more than 180 days prior to the date on which the claim is approved by the court in which the services were rendered shall be deemed waived and shall not be paid. The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.

(5) Appointed counsel in non-capital cases are not permitted to file interim claims but shall file claims for compensation no later than 180 days after disposition of the case in each court in which representation is provided. However, claims for the post-dispositional phase of a juvenile dependency and neglect proceeding shall be filed no later than 180 days from the last activity related to the case. Claims for compensation submitted after the 180-day period shall be deemed waived and shall not be paid. The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.

(6) Counsel will be held to a high degree of care in the keeping of contemporaneous time records supporting all claims and in the application for payment. Counsel is required to maintain records supporting claims for payment. Failure to provide sufficient specificity in the claim or supporting documentation may constitute grounds for denial of the claim for compensation or reimbursement.

(7) The payment of a claim by the AOC shall not prejudice the AOC's right to object to or question any claim or matter in relation thereto. Claims shall be subject to reduction for amounts included in any claim or payment previously made which are determined by the AOC not to constitute proper remuneration for compensable services. The AOC reserves the right to deduct from claims which are or shall become due and payable any amounts which are or shall become due and payable to the AOC.

(8) As a part of its examination and audit of claims for compensation and reimbursement under this Rule 13, the AOC shall determine from information provided by the Board of Professional Responsibility whether there are unpaid costs assessed against counsel submitting the claim pursuant to Tenn. Sup. Ct. R. 9, Section 31.3. Claims for compensation and reimbursement under this Rule 13 shall be subject to reduction for any such unpaid costs.

(b)(1) The AOC shall examine and audit all claims for compensation and reimbursement to insure compliance with this rule and other statutory requirements. The AOC may decline to make any payment or decline to continue to accept any assignment should either the attorney or the third-party assignee fail to comply with the requirements of Rule 13 and other statutory requirements.

(2) After such examination and audit and giving due consideration to state revenues, the director shall make a determination as to the compensation and/or reimbursement to be paid and cause payment to be issued in satisfaction thereof.

(3) Payment may be made directly to the person, agency, or entity providing the services.

(4) The determination by the director shall be final, except where review by the chief justice also is required. In those instances, the determination of the chief justice shall be final. The chief justice may designate another justice to perform this function if the chief justice determines that a designation is appropriate or necessary.

(5) If the director denies an attorney's fee claim in whole or substantial part, such denial shall be forwarded to the chief justice for review. The determination of the chief justice shall be final. Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.

(c)(1) Appointed counsel may contract with a third-party agent to prepare and file claims for attorney compensation and expenses; provided, however, that counsel shall remain responsible for all filings and communications in connection with such claims;

(2) Appointed counsel may assign the right to payment of claims for attorney compensation and expenses to a third-party assignee; provided, however, that: (i) counsel electing to assign the right to payment shall assign such right for all subsequent cases in which counsel will present claims for payment pursuant to this rule; and (ii) counsel shall provide adequate written notice to the director of counsel's assignment of the right to payment to the third-party assignee. Such written notice shall not be effective unless submitted on the Uniform Assignment of Payment For Services Due to An Attorney form provided by the administrative office of the courts. Upon receipt of adequate written notice of counsel's assignment, the director shall make subsequent payments of counsel's claims to the third-party assignee. An assignment submitted to the director shall not relieve counsel of the responsibility for the accuracy and timeliness of all filings nor shall it relieve counsel of the responsibility to personally respond to inquiries from the administrative office of the courts in connection with counsel's claims. Counsel's written notice of assignment shall remain in effect until the director receives written notice that counsel revokes the assignment. The third-party assignee shall agree in writing to indemnify and hold the state harmless for all payments made by the administrative office of the courts in good faith and without notification that the assignment has been revoked and shall file such writing with the director. [As amended by order filed February 6, 2013, effective July 1, 2013; by order filed September 4, 2013, effective January 1, 2014.]

Explanatory Comment: Section 6(a)(1)-(3) has been revised to clarify the requirements and process for submitting claims for compensation and reimbursement. Section 6(a)(4) mandates that appointed counsel in capital cases file interim claims at least every 180 days

but no more frequently than every 30 days and provides that any portion of a claim for services rendered more than 180 days prior to the date on which the claim is approved by the court will be deemed waived and not paid. The effective date of Section 6(a)(4) is January 1, 2005.

Section 6(a)(5) precludes appointed counsel in non-capital cases from filing interim claims for compensation but requires them to submit claims for compensation no later than 180 days after disposition of the case in each court in which representation is provided, with the 180 day period running from the date of the last case-related activity for post-dispositional phases of a dependency and neglect proceeding. Claims for compensation submitted after the 180-day period will be deemed waived and not paid. The effective date of Section 6(a)(5) is January 1, 2005. Section 6(a)(6) provides that counsel will be held to a high degree of care in record keeping and documentation of the claim. Section 6(a)(7) provides that the AOC reserves the right to review claims that come into question even if they have already been paid and

establishes that the AOC may recoup any overpayment by setting off the amount of any such overpayment against claims that may be filed. Section 6(b) delineates how claims are audited, approved for payment, and how payments are made. Section 6(b)(4) provides that the determination of the director and/or the chief justice is final. Unlike prior law, Section 6 does not provide for an appeal to the Tennessee Supreme Court from the decision of the director or the chief justice. Section 6(b)(4) also provides that the chief justice may designate another justice to review these claims if the chief justice determines that designation is appropriate or necessary. Section 6(b)(5) sets out those instances where an attorney may appeal the director's decisions to the chief justice.

Section 7. Contracts for indigent representation. In addition and as an alternative to the procedures for appointment and compensation of court-appointed counsel for services described above, the Administrative Director is authorized to enter into agreements with attorneys, law firms, or associations of attorneys to provide legal services for a fee to indigent persons in: (1) emergency involuntary judicial hospitalization actions brought pursuant to Tenn. Code Ann. Title 33, Chapter 6, Part 4; (2) Title IV-D child support enforcement proceedings brought pursuant to Tenn. Code Ann. Title 36, Chapter 5; and (3) cases under Titles 36 and 37 of the Tennessee Code Annotated involving allegations against parents that could result in finding a child dependent or neglected or in terminating parental rights. Such contracts may establish a fixed fee for representation in a specified number and type of cases; provided, however, that any such fixed fee shall not exceed the rates specified in Section 2.

Any such contracts for indigent representation shall be awarded based on an evaluation to determine the quality of representation to be provided, including the ability of attorneys making proposals to exercise independent judgment on behalf of each client, and to maintain workload rates that allow for attorneys to devote adequate time to each client covered by such contracts.

Attorneys providing legal services pursuant to contracts entered into pursuant to this Section shall be appointed to represent all indigent defendants in these cases unless such representation is otherwise prohibited by the Rules of Professional Conduct. See Tenn. Sup. Ct. R. 8. In any such case, the court shall appoint qualified counsel pursuant to the provisions of Section 1 of this rule.

The Administrative Director shall prescribe adequate procedures to ensure compliance with the terms of such contracts and shall report to the Court annually on the effectiveness of the contract process for the provision of indigent representation. [As adopted by order filed June 1, 2004, effective July 1, 2004; and amended by order filed September 2, 2004; by order filed September 2, 2005, effective October 1, 2005; by order filed June 12, 2006, effective June 12, 2006; by order filed February 27, 2008, effective February 27, 2008; by order filed October 9, 2008, effective July 1, 2008; by order filed July 13, 2011, effective July 13, 2011; by order filed June 27, 2012, effective July 1, 2012; by order filed February 6, 2013, effective July 1, 2013; by order filed

February 20, 2013, effective April 1, 2013; by order filed March 5, 2013; by order filed September 4, 2013, effective January 1, 2014; by order filed September 19, 2013, effective January 1, 2014; by order dated November 19, 2014, effective January 1, 2015.]

Compiler's Notes. In its order dated February 6, 2013, the Supreme Court provided that: "On March 8, 2010, the Court filed an order adopting Rule 13A on a provisional basis from May 1, 2010, through August 1, 2011. Rule 13A authorized the Administrative Office of the Courts to establish a system for the electronic submission of certain fee claims associated with the representation of indigent litigants and also authorized the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of the system."

"On May 10, 2012, the Court filed an order noting that the Administrative Office of the Courts had implemented the electronic-submission system authorized by the rule, and that the system was being used on a routine basis. The Court also announced its intention to undertake an internal review of the electronic-submission system, with a view toward adopting a permanent version of Rule 13A, and extending the effective date of provisional Rule 13A until further order of the Court."

"After completing its internal review of the electronic-submission system, the Administrative Office of the Courts proposed that the electronic-submission system be made mandatory for attorneys and interpreters, effective July 1, 2013, and that experts, investigators, and other support service providers continue to submit claims in writing after that date. To accomplish this, the AOC proposed amendments to Tenn. Sup. Ct. R. 13, 15, and 42, and the deletion of Tenn. Sup. Ct. R. 13A (as obsolete)."

"On October 23, 2012, the Court filed an order publishing the AOC's proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The deadline for submitting written comments was December 14, 2012."

"After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 13, Tenn. Sup. Ct. R. 15, and Tenn. Sup. Ct. R. 42 as set out in the attached appendices to this order [M2010-00520-SC-RL2-RL]. The effective date of these amendments is July 1, 2013."

"With the adoption of the foregoing amendments, Tenn. Sup. Ct. R. 13A is rendered obsolete. Consequently Tenn. Sup. Ct. R. 13A is hereby repealed, effective July 1, 2013."

In its order filed September 4, 2013, the Supreme Court added Rule 13, § 6(a)(8), effective January 1, 2014.

Supreme Court order no. M2011-01411-RL2-RL, entered July 9, 2014, provided: "On July 1,

2011 the Court filed an order soliciting public comments concerning a proposed amendment to Tenn. Sup. Ct. R. 13 to provide for an alternative method of compensating attorneys providing legal services to indigent person pursuant to the Rule. In summary, a proposed new Section 7 of the rule would have authorized the Administrative Office of the Courts ("AOC") to enter into contracts with attorneys, law firms, or associations of attorneys to provide legal services to indigent persons for a fixed fee."

"After due consideration of the proposed amendment, as well as the many comments received during the public comment period, the Court declined to amend Tenn. Sup. Ct. R. 13; in the alternative, however, the Court established a pilot project in the Davidson County Juvenile Court to assess the effectiveness of contracting with attorneys for representation of indigent defendants facing child support contempt charges. The project commenced on July 1, 2012, and was conducted during the 2012-2013 fiscal year. By order entered July 10, 2013, the Court extended the term of the pilot project until June 30, 2014, to allow for all data associated with cases assigned during the 2012-2013 fiscal year to be collected."

"Pursuant to the Court's order, the AOC submitted to the Court a report concerning the effectiveness of the pilot project. The report states that the contract approach was very successful and that the cost to the indigent defense fund for representation in the subject cases was reduced by approximately thirty-three percent over the prior fiscal year. At the same time, however, attorneys and Juvenile Court Magistrates who participated in the pilot project reported no decline in the level of representation on behalf of clients."

"In order for the Court to evaluate the information submitted by the AOC and to avoid a disruption in the current working arrangement in each of the three participating courtrooms, the pilot project is hereby extended for an additional six months, through December 31, 2014. The Court will consider at a later date whether to adopt the contract program on a permanent basis in the cases currently covered by the pilot project and also will consider whether to expand the contract program to other types of cases covered by Rule 13."

Cross-References. Advertised fee as basis for court award for services, T.C.A. § 23-3-109.

Supreme Court to prescribe by rule nature of expenses for which reimbursement may be allowed, T.C.A. § 40-14-206.

Law Reviews. A Noble Ideal Whose Time

Has Come (Penny J. White), 18 Mem. St. U.L. Rev. 223 (1989).

Adjudicating Claims of Innocence for the Capitally Condemned in Tennessee: Embracing a Truth Forum (Dwight Aarons), 76 Tenn. L. Rev. 511 (2009).

Defending Life in Tennessee Death Penalty Cases (Roy B. Herron), 51 Tenn. L. Rev. 681 (1984).

Post-Conviction Relief in Tennessee — Fourteen Years of Judicial Administration Under the Post-Conviction Procedure Act (Gary L. Anderson), 48 Tenn. L. Rev. 605.

Pretend Justice—Defense Representation in Tennessee Death Penalty Cases (William P. Redick, Jr., Bradley A. MacLean, and M. Shane Truett), 38 U. Mem. L. Rev. 303 (2008).

Time Is Money — But Our Indigents Have Neither, 11 Tenn. J. L. & Pol'y 24 (2016).

What Price is Justice? Adequate funding for judicial system needs to be top priority of upcoming General Assembly (W. Andy Hardin), 37 No. 2 Tenn. B.J. 23 (2001).

Attorney General Opinions. Applicability to deposition expenses, OAG 90-59 (5/11/90).

Public defenders' representation of indigents

in child support and contempt proceedings, OAG 98-092 (4/15/98).

Because a juvenile court has the authority to appoint counsel and to punish disobedience of its orders as contempt, an attorney who refuses a juvenile court order of appointment commits, and may be punished for, contempt, regardless whether she intends to practice in that court in the future, OAG 02-107(10/01/02).

The district public defender has no duty to appear at "drug court" staffings and appearances unless the defendant's liberty is directly at stake in the particular proceeding involved, OAG 03-009 (1/24/03).

An indigent defendant in an action to enforce a child support obligation through contempt of court proceedings has a right to counsel if the defendant is in jeopardy of incarceration, OAG 04-142 (9/01/04).

Compensation for interpreters for indigent criminal defendants. OAG 10-64, 2010 Tenn. AG LEXIS 69 (5/6/10).

Right to appointed counsel for probation revocation. OAG 12-16, 2012 Tenn. AG LEXIS 16 (2/17/12).

NOTES TO DECISIONS

ANALYSIS

1. Appointment of Counsel.
2. Expert Assistance.

1. Appointment of Counsel.

Court erred in finding that the parents, in a complex, extended dependency and neglect case, were not indigent and finding their seven children dependent and neglected and that the parents had committed severe child abuse; that finding could have led to termination of parental rights and the parents clearly had a right to appointed counsel if they were indigent. The parents were entitled to a thorough hearing in compliance with T.C.A. § 40-14-202 to determine if they were indigent and thus, entitled to appointed counsel under Tenn. Sup. Ct. R. 13(d)(2)(B). Tenn. Dep't of Children's Servs. v. David H., 247 S.W.3d 651, 2006 Tenn. App. LEXIS 193 (Tenn. Ct. App. Mar. 21, 2006).

Income alone is not the sole determinative of whether a person qualifies as indigent for purposes of appointment of counsel. In a complex case, a reasonable attorney fee could easily be beyond the financial ability of persons who are employed but earn modest wages. Tenn. Dep't of Children's Servs. v. David H., 247 S.W.3d 651, 2006 Tenn. App. LEXIS 193 (Tenn. Ct. App. Mar. 21, 2006).

McLaney v. Bell, 59 S.W.3d 90, 2001 Tenn. LEXIS 764 (Tenn. 2001) is overruled to the extent that it can be interpreted to require the appointment of counsel and a hearing whenever a pro se habeas corpus petition alleges

that an agreed sentence is illegal based on facts not apparent from the face of the judgment; summary dismissal may be proper when the defendant fails to attach to the habeas corpus petition pertinent documents from the record of the underlying proceedings to support his factual assertions. *Summers v. State*, 212 S.W.3d 251, 2007 Tenn. LEXIS 15 (Tenn. 2007).

Father had adequate notice of termination proceedings, appeared at the hearings, brought witnesses to testify, and had a very capable attorney ably representing his interests at the termination hearings; thus, failure to appoint counsel in dependency and neglect proceedings was not ground for reversal of the termination of father's parental rights on appeal. *Department of Children's Servs. v. Mims*, 285 S.W.3d 435, 2008 Tenn. App. LEXIS 706 (Tenn. Ct. App. Nov. 24, 2008), appeal denied, *In re N.B.*, — S.W.3d —, 2009 Tenn. LEXIS 146 (Tenn. Mar. 16, 2009).

Defendant's convictions for first-degree murder, attempted first-degree murder, and aggravated arson were proper because, as valuable as two attorneys might be in a capital case, Tenn. Sup. Ct. R. 13, § 3(b)(1) was not a rule of constitutional dimension and thus, defendant failed to show a constitutional basis that would have required a second attorney in his case. *State v. Hester*, 324 S.W.3d 1, 2010 Tenn. LEXIS 897 (Tenn. Oct. 5, 2010), cert. denied, *Hester v. Tennessee*, 179 L. Ed. 2d 896, 563 U.S. 939, 131 S. Ct. 2096, 2011 U.S. LEXIS 3140 (U.S. 2011), superseded by statute as stated in, *State v. Wilson*, — S.W.3d —, 2013 Tenn. Crim.

App. LEXIS 126 (Tenn. Crim. App. Feb. 13, 2013).

Under Tennessee law, petitioner had a right to appointed counsel in state proceedings challenging his competency to be executed, and 18 U.S.C. § 3599(a)(2) provided for counsel only when a state petitioner was unable to obtain adequate representation; absent clear direction from the United States Supreme Court or Congress, the court declined to obligate the federal government to pay for counsel in state proceedings where the state itself had assumed that obligation. *Irick v. Bell*, 636 F.3d 289, 2011 FED App. 90P, 2011 U.S. App. LEXIS 7552 (6th Cir. Apr. 13, 2011).

Attorneys who were appointed pursuant to Tenn. Sup. Ct. R. 13 to represent parents in a termination of parental rights proceeding were not entitled to attorney's fees under T.C.A. § 36-5-103 because: (1) while the case involved child custody, not every termination case was a custody case under T.C.A. § 36-5-103(c) (2010); (2) there was no prevailing party, since the dispute was mediated; and (3) Tenn. Sup. Ct. R.

13 defined the boundaries of counsel's compensation. *In re Nathaniel C. T.*, 447 S.W.3d 244, 2014 Tenn. App. LEXIS 143 (Tenn. Ct. App. Mar. 17, 2014), appeal denied, *In re Nathaniel C.T.*, — S.W.3d —, 2014 Tenn. LEXIS 763 (Tenn. Sept. 18, 2014).

2. Expert Assistance.

Expert testimony bearing on issue of whether defendant was intoxicated was relevant evidence and properly admissible because questions of whether defendant was under the influence of PCP at the time of the offense, and whether his intoxication had any bearing on his ability to premeditate and form the intent to kill were questions appropriate for the jury's consideration; thus, trial court erred by revoking funds for defendant to hire an expert effectively prevented him from presenting the defense of voluntary intoxication at his trial because this was critical to defendant's defense. *State v. Vaughn*, 279 S.W.3d 584, 2008 Tenn. Crim. App. LEXIS 442 (Tenn. Crim. App. June 16, 2008).

Rule 13 Forms

IN THE _____ COURT FOR _____ COUNTY

STATE OF TENNESSEE
vs.

Case No. _____

Defendant _____

UNIFORM AFFIDAVIT OF INDIGENCY

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

PART I

1. Full Name: _____
2. Social Security No.: _____
3. Any other names ever used: _____
4. Address: _____
5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____
6. Are you working anywhere? Yes () No () Where _____
7. How much do you make? _____ (weekly, monthly, etc.)
8. Birthdate: _____
9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)? Yes () No () What is its value? _____ (weekly, monthly, etc.)
10. Do you own any property (house, car, bank acct., etc.): Yes () No () What is its value? _____
11. Are you, or your family, going to be able to post your bond? Yes () No ()
12. Are you, or your family, going to hire a private attorney? Yes () No ()
13. Are you now in custody? Yes () No () If so, how long have you been in custody? _____
(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

14. Names & ages of all dependents: _____ relationship _____
_____ relationship _____
_____ relationship _____
15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
Name _____
Address _____
16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
\$ _____ per _____ from _____
\$ _____ per _____ from _____
\$ _____ per _____ from _____
17. All money available to me from any source: A. Cash _____
B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance _____
C. Debts owed me _____

D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.)

E. Other

18. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____	value \$ _____	amt. owed _____
_____	value \$ _____	amt. owed _____
_____	value \$ _____	amt. owed _____

19. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

_____	value \$ _____	amt. owed _____
_____	value \$ _____	amt. owed _____

20. All assets or property not already listed owned within the last six months or expected in the future:

_____	value \$ _____	amt. owed _____
_____	value \$ _____	amt. owed _____

21. The last income tax return I filed was for the year _____ and it reflected a net income of \$ _____.

I will file a copy of same within one week if required.

22. I am out of jail on bond of \$ _____ made by _____.
The money to make bond, \$ _____ was paid by _____.

PART III

23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

25. I understand that it is a **Class A misdemeanor** for which I can be sentenced to jail for up to 11 months 29 days or be fined up to \$2500.00 or both if I **intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit.** I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This _____ day of _____, _____.

Defendant

Sworn to and Subscribed before me this _____ day of _____, _____.

Clerk

Judge

UNIFORM ASSIGNMENT OF PAYMENT FOR SERVICES DUE TO AN ATTORNEY UNDER RULE 13

In accordance with and subject to the requirements of Tennessee Supreme Court Rule 13 ("Rule 13"), I, _____, BPR No. _____ ("Assignor"), hereby assign any and all sums of money owed to me for legal services rendered pursuant to Rule 13, as evidenced by claims submitted to the Administrative Office of the Courts ("AOC") on and after the date of the receipt of this notice by the AOC. The AOC is hereby authorized and requested to pay all such sums directly to _____ ("Assignee"), at the following address:

This assignment is to remain in full force and effect for all claims submitted to the AOC until further notice. I understand that written notification to the AOC and acknowledgment of the receipt thereof by the AOC shall be required to terminate this assignment. I hereby agree to indemnify and hold harmless the State of Tennessee, its agents and employees, and the Tennessee Supreme Court, its agents and employees (including but not limited to employees of the AOC), against any and all claims for payment by any person or agency, including myself, for legal services provided by me pursuant to Rule 13 on and

after the effective date of this assignment and prior to written acknowledgment by the AOC of the termination of this assignment. I also acknowledge that this assignment does not relieve me of my responsibility for the accuracy and timeliness of all filings, nor shall it relieve me of my responsibility to personally respond to inquiries from the AOC in connection with claims for payment submitted by me or on my behalf.

Dated this ____ day of _____, 20____.

Attorney (Assignor)

To be Completed by Assignee:

As an agent of _____, the Assignee of the payments identified above, I acknowledge that I have full authority to act on behalf of such Assignee, and in that capacity, I further acknowledge that Assignee is familiar with and agrees to the requirements of Rule 13 regarding assignments of payment by attorneys. In accordance with Rule 13, Assignee agrees to indemnify and hold harmless the State of Tennessee, its agents and employees, and the Tennessee Supreme Court, its agents and employees (including but not limited to employees of the AOC), against any and all claims for payment for the services which are the subject of this assignment by any individual or organization (including the Assignor) unless and until written notification that this assignment has been revoked has been received and acknowledged by the AOC.

Dated this ____ day of _____, 20____.

For the Assignee,

By: _____

To be Completed by the AOC:

This assignment was received and acknowledged by the AOC on the ____ day of _____, 20____.

By: _____

The revocation of this assignment was received and acknowledged by the AOC on the ____ day of _____, 20____.

By: _____

Rule 13A. [Repealed.]

Compiler's Notes. In its order filed March 8, 2010, the Court ordered that: "In order to expedite and to streamline the processing of claims relating to the representation of and provision of services to persons determined to be indigent pursuant to Supreme Court Rule 13, this Court hereby adopts Tennessee Supreme Court Rule 13A attached hereto as Appendix 1. Rule 13A permits the Administrative Office of the Courts, to establish a system for electronically submitting certain fee claims associated with the representation of indigent

litigants and authorizes the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of this electronic claims system.

"Accordingly, it is hereby ORDERED that the rule set forth in attached Appendix 1 shall be and hereby is adopted as Rule 13A of the Rules of the Supreme Court of Tennessee.

"It is further ORDERED that Rule 13A is a provisional rule that shall be effective from May 1, 2010, through August 1, 2011. At an appropriate time during this period, the Court

may solicit comments regarding the operation, effect, and efficacy of this rule.”

In its order filed May 10, 2012, the Supreme Court ordered that the effective date of provisional Rule 13A be extended until further order of the Court. The effective date of the order is August 1, 2011, *nunc pro tunc*.

In its order dated February 6, 2013, the Supreme Court provided that: “On March 8, 2010, the Court filed an order adopting Rule 13A on a provisional basis from May 1, 2010, through August 1, 2011. Rule 13A authorized the Administrative Office of the Courts to establish a system for the electronic submission of certain fee claims associated with the representation of indigent litigants and also authorized the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of the system.

“On May 10, 2012, the Court filed an order noting that the Administrative Office of the Courts had implemented the electronic-submission system authorized by the rule, and that the system was being used on a routine basis. The Court also announced its intention to undertake an internal review of the electronic-submission system, with a view toward adopting a permanent version of Rule 13A, and extending the effective date of provisional Rule 13A until further order of the Court.

“After completing its internal review of the electronic-submission system, the Administrative Office of the Courts proposed that the electronic-submission system be made mandatory for attorneys and interpreters, effective July 1, 2013, and that experts, investigators, and other support service providers continue to submit claims in writing after that date. To accomplish this, the AOC proposed amendments to Tenn. Sup. Ct. R. 13, 15, and 42, and the deletion of Tenn. Sup. Ct. R. 13A (as obsolete).

“On October 23, 2012, the Court filed an order publishing the AOC’s proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The deadline for submitting written comments was December 14, 2012.

“After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 13, Tenn. Sup. Ct. R. 15, and Tenn. Sup. Ct. R. 42 as set out in the attached appendices to this order [M2010-00520-SC-RL2-RL]. The effective date of these amendments is July 1, 2013.

“With the adoption of the foregoing amendments, Tenn. Sup. Ct. R. 13A is rendered obsolete. Consequently Tenn. Sup. Ct. R. 13A is hereby repealed, effective July 1, 2013.”

Rule 14. Withdrawal of Counsel for Indigent Party After Adverse Decision in Intermediate Appellate Court. Permission for leave to withdraw as counsel for an indigent party after an adverse final decision in the Court of Appeals or Court of Criminal Appeals and before preparation and filing of an Application for Permission to Appeal in the Supreme Court must be obtained from the intermediate appellate court by filing a motion with the Appellate Court Clerk not later than fourteen (14) days after the intermediate court’s entry of final judgment.

The motion shall state that: (1) based upon counsel’s review of the opinion of the intermediate appellate court, the brief filed on behalf of the indigent party in that court presents such issues as are available for second-tier appellate review if sought by the party acting *pro se*, and (2) the written notification prescribed by this rule and a copy of the intermediate court’s opinion have been forwarded to the indigent party.

The motion shall be accompanied by a copy of the written notification forwarded to the indigent party. The written notification shall state: (1) that counsel does not intend to file an Application for Permission to Appeal and that counsel is asking the intermediate court for permission to withdraw; (2) that the party may file a *pro se* Application for Permission to Appeal with the Clerk of the Supreme Court if filed within sixty (60) days after entry of final judgment in the intermediate appellate court; (3) the date on which the intermediate court’s opinion was released; and (4) the date on which an Application for Permission to Appeal is due. The written notification must also reflect the party’s mailing address to which the notice was forwarded.

Compiler's Notes. In its order dated February 6, 2013, the Supreme Court provided that: "On March 8, 2010, the Court filed an order adopting Rule 13A on a provisional basis from May 1, 2010, through August 1, 2011. Rule 13A authorized the Administrative Office of the Courts to establish a system for the electronic submission of certain fee claims associated with the representation of indigent litigants and also authorized the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of the system.

"On May 10, 2012, the Court filed an order noting that the Administrative Office of the Courts had implemented the electronic-submission system authorized by the rule, and that the system was being used on a routine basis. The Court also announced its intention to undertake an internal review of the electronic-submission system, with a view toward adopting a permanent version of Rule 13A, and extending the effective date of provisional Rule 13A until further order of the Court.

"After completing its internal review of the electronic-submission system, the Administra-

tive Office of the Courts proposed that the electronic-submission system be made mandatory for attorneys and interpreters, effective July 1, 2013, and that experts, investigators, and other support service providers continue to submit claims in writing after that date. To accomplish this, the AOC proposed amendments to Tenn. Sup. Ct. R. 13, 15, and 42, and the deletion of Tenn. Sup. Ct. R. 13A (as obsolete).

"On October 23, 2012, the Court filed an order publishing the AOC's proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The deadline for submitting written comments was December 14, 2012.

"After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 13, Tenn. Sup. Ct. R. 15, and Tenn. Sup. Ct. R. 42 as set out in the attached appendices to this order [M2010-00520-SC-RL2-RL]. The effective date of these amendments is July 1, 2013.

"With the adoption of the foregoing amendments, Tenn. Sup. Ct. R. 13A is rendered obsolete. Consequently Tenn. Sup. Ct. R. 13A is hereby repealed, effective July 1, 2013."

Sec. 3. Clerk fees. — In all judicial proceedings under Chapters 3 through 8 of Title 33, the clerks of the several trial courts shall tax costs in a bill of costs pursuant to Tenn. Code Ann. §§ 8-21-104 and 8-21-401. Appellate clerks shall tax costs to a bill of costs pursuant to Tenn. Code Ann. § 8-21-501. This bill of costs on the approved Supreme Court form shall be submitted to the director of the Administrative Office of the Courts.

Sec. 4. Sheriff fees. — In all judicial proceedings under Chapters 3 through 8 of Title 33 requiring the services of sheriffs or deputies, the sheriff shall submit a request to the clerk of the court where the proceedings were held, demanding fees pursuant to Tenn. Code Ann. § 8-21-901. The sheriff's itemized statement for all travel expenses shall be appended to the bill of costs submitted to the director of the Administrative Office of the Courts. The clerk of court shall tax these costs as part of the bill of costs submitted on the approved Supreme Court form to the director of the Administrative Office of the Courts.

Sec. 5. Witness fees. — Witnesses subpoenaed to appear in proceedings held pursuant to Chapters 3 through 8 of Title 33 shall be paid fees and mileage as provided for witnesses generally (Tenn. Code Ann. § 24-4-101 et seq.). A state employee employed at a fixed compensation, serving as a witness shall not claim a witness fee (Tenn. Code Ann. § 8-23-201).

Sec. 6. [Audit and payment of fees.] — The director of the Administrative Office of the Courts shall examine and audit all claims for clerks' fees, sheriffs' fees, and witnesses' fees to insure compliance with these rules and other statutory requirements. Upon the audit and approval of the clerks' fees,

sheriffs' fees, and witnesses' fees, the director of the Administrative Office of the Courts shall issue payment in satisfaction of the approved fees. The determination by the director of the Administrative Office of the Courts shall be final. [As amended by order filed September 4, 2001.]

Compiler's Notes. The catchline for § 6 of this rule was added by the Publisher.
Cross-References. Advertised attorneys fee as basis for court award for services, T.C.A. § 23-3-109.

NOTES TO DECISIONS

1. Sanctions.

Attorney was disbarred after committing bank fraud based on an elaborate scheme to obtain funds to which she was not entitled; the attorney's return of funds before she learned of the criminal investigation was not a mitigating factor because the return was made based on

the attorney's belief another party might claim the funds, not to remedy the consequence of earlier fraud. *Meehan v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 584 S.W.3d 403, 2019 Tenn. LEXIS 424 (Tenn. Sept. 20, 2019).

Rule 16. Appointment and Compensation of Counsel for Indigent Persons in Parole Revocation Hearings. — Pursuant to Tenn. Code Ann. § 40-28-122(b), the Supreme Court hereby adopts the following rules for the payment of expenses and compensation to attorneys appointed to represent indigent persons in parole revocation proceedings. For purposes of this rule, a proceeding is a two-stage process, beginning with an initial, probable cause hearing which may be followed by a revocation of parole hearing.

Sec. 1. Appointment of counsel. — The Board of Probation and Parole (hereinafter referred to as the Board) is authorized to appoint, acting on its own or through its designee, legal counsel for an indigent individual in parole revocation proceedings. Counsel for an indigent individual shall be appointed pursuant to Rule 13, Rules of the Tennessee Supreme Court.

The provisions of Sections 1, 2, 4, and 6 of Rule 13 shall apply to appointment of counsel by the Board unless the context of a particular provision requires otherwise. The word "court," as used in Sections 1, 2, 4, and 6 of Rule 13, shall be deemed to include the Board unless the context requires otherwise.

If the case appears to be one which merits counsel, the Board or its designee shall make a determination of whether the parolee is indigent pursuant to Rule 13(e). The Board shall, in writing, note its determination of the issue of indigency, and the written finding shall become a part of the parolee's record.

In cases in which the individual faces criminal charges arising out of or related to the same set of operative facts from which the parole revocation proceedings arose, the same attorney shall, when possible, represent the defendant/parolee at all proceedings. However, the attorney shall receive but one compensation for work done in the furtherance of the attorney's duties for both criminal and parole revocation proceedings where such work overlaps. One attorney shall represent the parolee at all stages of the parole revocation proceedings when possible. Should different attorneys represent the parolee at each stage of the proceeding, the total compensation which may be paid to all attorneys shall not exceed the maximum compensation for one parolee, as provided for in Rule 13. In all such cases, compensation for attorneys' services

shall not be fixed by the Board until the conclusion of the parole revocation proceeding so that the Board may make such apportionment of compensation between or among the attorneys as may be just.

If after being advised of the right to an attorney, the parolee refuses counsel, such refusal shall be made in writing and signed by the parolee in the presence of the Board or its designee who shall acknowledge the person's signature. The written refusal shall be made a part of the person's record.

Sec. 2. Compensation for appointed counsel. — a. Claims for compensation and reimbursement of expenses shall be filed and acted upon by the Board in compliance with Rule 13. The director of the Administrative Office of the Courts shall examine and audit such claims and determine the amount of compensation and reimbursement pursuant to Rule 13.

b. All claims for compensation and for reimbursement of expenses shall be submitted by the attorney to the Board or its designee. The Board shall certify all fees and costs for all attorneys on one reimbursement claim for each case on a form authorized by the director of the Administrative Office of the Courts. The Board or its designee shall assign to each case a case number by which the case shall be identified in all correspondence with the director of the Administrative Office of the Courts. [As amended by order filed September 4, 2001.]

Cross-References. Advertised fee as basis for court award for services, T.C.A. § 23-3-109.

Parole revocation proceedings, T.C.A. §§ 40-28-121 — 40-28-123.

Law Reviews. Tennessee Criminal Constitutional Law from 1974-1980: A Survey and Analysis (R. Tim. Wurz), 12 Mem. St. U.L. Rev. 249 (1982).

Rule 17. Uniform Judgment Document. — Pursuant to Tenn. Code Ann. § 40-35-209(f), the judgment document appended to this rule is provided for the use of all trial judges of courts of record for convictions in all cases falling within the Tennessee Criminal Sentencing Reform Act of 1989. The judgment document shall be in the form provided and shall contain all of the information required by Tenn. Code Ann. § 40-35-209(e). The judgment should be prepared for each conviction; if there are multiple convictions in the same indictment, separate judgments should be filled out with appropriate notations stating whether the sentences will run consecutively or concurrently. The date of the judgment shall be the date upon which the order of sentence was entered. The provisions for incarceration in a regional workhouse should not be utilized until such time as regional workhouses are designated for certain counties by the Department of Correction. At that time the director of the Administrative Office of the Courts will make appropriate notification.

The form of the judgment document attached hereto is made a part hereof and incorporated herein by reference. The judgment document will be provided to all trial judges of courts of record. [Adopted December 1, 1982; as amended by order entered April 30, 1987, by order entered November 1, 1989, by order entered November 1, 1990, effective January 1, 1991, August 5, 1992, by order entered October 26, 1992, by order entered June 16, 1994, by order entered November 6, 1995, by orders filed February 17, 2000, February 25, 2000, effective July 1, 2000, by order filed September 1, 2005; by order filed November 2, 2007, effective January 1, 2008; by order filed July 27, 2011, effective July 27, 2011; by order filed December 19, 2012, effective April 1,

2013; and, by order dated November 24, 2014, effective January 1, 2015.]

Compiler's Notes. In its order filed July 27, 2011, the Supreme Court provided: "In addition to adopting the foregoing amendment to the text of Tenn. Sup. Ct. R. 17, [which deleted 'except capital cases, see Tenn. Code Ann. § 39-13-204(f) and (g)' from the first sentence of the first paragraph], the Court has determined for the following two reasons that the uniform judgment document should be revised. First, statutory changes recently adopted by the General Assembly regarding sentencing in aggravated robbery cases require a revision of the uniform judgment document. Second, the Court concludes that other changes would improve the content of the uniform judgment document and would promote more consistency in the manner in which it is completed in the trial courts. Accordingly, the Court hereby adopts the revised uniform judgment document attached to this order. Because the District Attorneys General Conference and several counties will be required to reprogram computer systems which record case dispositions, the new uniform judgment document shall not take effect until November 1, 2011. [see the revised uniform judgment document following Rule 17.]"

"The Court hereby directs the Administrative Office of the Courts ('AOC') to provide the trial judges, court clerks, and affected agencies with a memorandum detailing the changes to the uniform judgment document. The AOC also shall provide them with an instruction manual regarding the uniform judgment document."

In its order filed December 19, 2012, the Supreme Court provided that: "On October 8, 2012, the Court filed an order soliciting public comments on proposed amendments to the uniform judgment document that Tennessee Supreme Court Rule 17 incorporates by reference. The proposed amendments were necessary due to recent legislation as well as to recommendations made by interested persons and agencies following the Court's adoption of a revised uniform judgement document in 2011."

"After due consideration, the court had decided to adopt the amended uniform judgment document, which is set out in Appendix A to this order [M2012-02131-SC-RL2-RL]. Because the District Attorneys General Conference and several counties will be required to reprogram computer systems that record case dispositions, the effective date for the amended uniform judgement document shall be April 1, 2013."

"The Court hereby directs the Administrative Office of the Courts ('AOC') to notify the trial judges, court clerks, and affected agencies of the adoption of the amended uniform judgment document. The AOC shall also provide them with an updated instruction manual regarding the use of the document."

The amended uniform judgment document as promulgated by the Supreme Court in its order dated December 19, 2012, effective April 1, 2013, is set out following Rule 17.

In its order filed June 13, 2013, the Supreme Court provided that: "Public Chapters 425, 426 and 461 of the Acts of 2013 amend Tennessee Code Annotated section 40-35-501 relative to the release eligibility percentages for persons convicted of certain offenses. It is necessary for the Court to amend the uniform judgment document attached to Tenn. Sup. Ct. R. 17 to reflect these statutory changes, which become effective on July 1, 2013. Accordingly, the Court hereby amends the uniform judgment document by adding this new information and making appropriate spacing changes to accommodate this information. The amended uniform judgment document is attached as an Appendix hereto [M2012-02131-SC-RL2-RL]. This amendment shall take effect on July 1, 2013."

The amended uniform judgment document as promulgated by the Supreme Court in its order dated December 19, 2012, effective April 1, 2013, is set out following Rule 17.

In its order filed February 15, 2019, the Supreme Court provided that: "On September 25, 2018, the Court filed an Order soliciting public comments on proposed amendments to the uniform judgement document set forth in Tennessee Supreme Court Rule 17. The deadline for submitting written comments was November 27, 2018. The Court received five written comments during the comment period."

"After due consideration, the Court hereby adopts the amendments to the uniform judgement as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

The amended uniform judgment document as promulgated by the Supreme Court in its order dated and effective February 15, 2019, is set out following Rule 17.

In its order filed February 26, 2019, the Supreme Court provided that: "On September 25, 2018, the Court filed an Order soliciting public comments on proposed amendments to the uniform judgement document set forth in Tennessee Supreme Court Rule 17. The deadline for submitting written comments was November 27, 2018. The Court received five written comments during the comment period."

"After due consideration, the Court hereby adopts the amendments to the uniform judgement as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

The amended uniform judgment document as promulgated by the Supreme Court in its order dated and effective February 26, 2019, is set out following Rule 17.

Attorney General Opinions. Constitutionality of proposed “guilty but excused from responsibility” verdict, OAG 99-116 (5/14/99).

NOTES TO DECISIONS

ANALYSIS

1. Application.
2. Compliance.

1. Application.

Defendant's convictions for animal cruelty were proper under Tenn. Sup. Ct. R. 17 and T.C.A. § 40-35-209(e) because the “judgment” entered by the trial court was a preliminary sentencing order, and not a final judgment, since it was not in the form of a uniform judgment document and did not contain much of the information required in a final judgment form; the trial court also specifically reserved the determination of the restitution owed to the county to a later date following an evidentiary hearing. *State v. Siliski*, 238 S.W.3d 338, 2007 Tenn. Crim. App. LEXIS 390 (Tenn. Crim. App. May 15, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 878 (Tenn. Sept. 17, 2007).

Because defendant was found guilty of violating a municipal ordinance, the court of criminal appeals was without subject matter jurisdiction to consider the case, and thus, it had to transfer the case to the court of appeals for further adjudication; a circuit court order found defendant guilty of violating a city ordinance for failure to adhere to a stop sign, and the circuit

court did not issue a Uniform Judgment Document, which was required for every criminal conviction. *City of McMinnville v. Hubbard*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 104 (Tenn. Crim. App. Feb. 20, 2019).

2. Compliance.

When two jury verdicts are merged into a single conviction, the trial court should complete a uniform judgment document for each count with the merger noted in the “Special Conditions” box for each document. The judgment document for the greater (or surviving) conviction reflecting the jury verdict on the greater count and the sentence imposed by the trial court, while the judgment document for the lesser (or merged) conviction should reflect the jury verdict on the lesser count and the sentence imposed by the trial court. *State v. Berry*, 503 S.W.3d 360, 2015 Tenn. LEXIS 925 (Tenn. Nov. 16, 2015).

Judgment documents in defendant's case were correct because, when defendant's conviction of aggravated assault merged with his conviction for attempted second degree murder, the trial court correctly reflected the merged conviction on two separate uniform judgment documents. *State v. Berry*, 503 S.W.3d 360, 2015 Tenn. LEXIS 925 (Tenn. Nov. 16, 2015).

IN THE CRIMINAL/CIRCUIT COURT FOR _____ COUNTY, TENNESSEE

Case Number: _____ Count # _____ Counsel for the State: _____
Judicial District: _____ Judicial Division: _____ Counsel for the Defendant: _____
Co-Counsel for the Defendant: _____
☐ Retained ☐ Pub Def Appt ☐ Private Atty Appt
☐ Counsel Waived ☐ Pro Se

State of Tennessee
vs.
Defendant: _____ Alias: _____ Date of Birth: _____ Sex: _____
Race: _____ SSN: _____ Driver License #: _____ Issuing State: _____
State ID #: _____ County Offender ID # (if applicable): _____ TDOC #: _____
Relationship to Victim: _____ Victim's Age: _____
State Control #: _____ Arrest Date: _____ Indictment Filing Date: _____

JUDGMENT ☐ Original ☐ Amended ☐ Corrected

Come the parties for entry of judgment.
On the _____ day of _____, 20____, the defendant:

<input type="checkbox"/> Pled Guilty <input type="checkbox"/> Pled Nolo Contendere <input type="checkbox"/> Pled Guilty - Certified Question Findings Incorporated by Reference <input type="checkbox"/> Dismissed <input type="checkbox"/> Nolle Prosequi with costs <input type="checkbox"/> Nolle Prosequi without costs Is found: <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Not Guilty by Reason of Insanity <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Bench Trial Merged with Count: _____	Indictment: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name: _____ Indicted Offense TCA §: _____ Amended Offense Name: _____ Amended Offense TCA §: _____ Offense Date: _____ County of Offense: _____ Conviction Offense Name: _____ Conviction Offense TCA §: _____ Conviction: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Sentence Imposed Date: _____
---	---

After considering the evidence, the entire record, and in the case of sentencing, all factors in Tennessee Code Annotated Title 40, Chapter 35, all of which are incorporated by reference herein, it is ORDERED and ADJUDGED that the conviction described above is imposed hereby and that a sentence and costs are imposed as follows:

Offender Status (Check One)	Release Eligibility for Felony Offense (Check One)	<input type="checkbox"/> 1 st Degree Murder <input type="checkbox"/> Pre 1989 <input type="checkbox"/> Reform Act 1989 <input type="checkbox"/> Drug Free Zone <input type="checkbox"/> Gang Related <input type="checkbox"/> Repeat Violent Off
<input type="checkbox"/> Mitigated <input type="checkbox"/> Standard <input type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> § 40-35-501(i) 100% <input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Agg Rapist 100% <input type="checkbox"/> Child Predator 100% <input type="checkbox"/> § 39-13-518 100%	<input type="checkbox"/> Agg Rob 85% <input type="checkbox"/> Agg Rob w/Prior 100% <input type="checkbox"/> § 39-17-1324(a), (b) 100% <input type="checkbox"/> Mult § 39-17-1324(j) 100% <input type="checkbox"/> Agg Assault w/Death 75% <input type="checkbox"/> Att 1 st Deg Murder w/SBI 85% <input type="checkbox"/> Agg Child Neg/En 70% <input type="checkbox"/> Agg Child Neg/En 85% <input type="checkbox"/> Agg Vehicular Homicide 60% <input type="checkbox"/> Carjacking 75% <input type="checkbox"/> § 40-35-501(u) 85%

Concurrent with: _____	Pretrial Jail Credit Period(s): From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____ It is not the intent of the court for duplication of Jail Credit to be applied to consecutive sentences
Consecutive to: _____	

Sentenced To: ☐ TDOC ☐ County Jail ☐ Workhouse
Sentence Length: _____ Years _____ Months _____ Days _____ Hours ☐ Life ☐ Life w/out Parole ☐ Death
Mandatory Minimum Sentence Length: _____ §§ 39-17-417, 39-13-513, 39-13-514, or 39-17-432 in Prohibited Zone
_____ § 55-10-401 DUI 4th Offense
_____ § 39-17-1324 Possession/Employment of Firearm
_____ §§ 40-39-208, -211 Violation of Sex Offender Registry
_____ Meth §§ (39-17-434, -417, -418)
Period of incarceration to be served prior to release on probation or Community Corrections: _____ Months _____ Days _____ Hours
Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor or Split Confinement Only)
Alternative Sentence: ☐ Sup Prob ☐ Unsup Prob ☐ Comm Corr ☐ Prob Sup By Comm. Corr (CHECK ONE BOX)
_____ Years _____ Months _____ Days Effective: _____
WAS DRUG/RECOVERY COURT ORDERED AS A CONDITION OF THE ALTERNATIVE SENTENCE? ☐ Yes ☐ No

Judge's Name Judge's Signature

The Uniform Judgment Document was replaced by order filed November 24, 2014, effective January 1, 2015.

The Uniform Judgment Document was replaced by order filed February 15, 2019, effective February 15, 2019.

The Uniform Judgment Document was replaced by order filed February 26, 2019, effective February 26, 2019.

Rule 17A. Order of Deferral (Judicial Diversion). — (1) The Order of Deferral (Judicial Diversion) appended to this rule is provided for the use of all trial judges of courts of record for cases in which the court defers proceedings against a qualified defendant and places the defendant on probation pursuant to Tenn. Code Ann. § 40-35-313. The district attorney general shall complete and file the order, including the certificate completed by the Tennessee Bureau of Investigation pursuant to Tenn. Code Ann. § 40-35-313, within 30 days of the granting of diversion. If there are multiple charges in the same indictment, a separate order shall be completed for each offense for which the court grants judicial diversion. The date of the order shall be the date upon which the diversion order is entered.

(2) After the required signatures have been obtained and the order has been entered, the court clerk shall forward a copy of the order to the state agencies and other entities identified by the Administrative Office of the Courts, and shall do so in the manner designated by the Administrative Office of the Courts.

(3) Pursuant to Tenn. Code Ann. § 40-35-313, the granting of judicial diversion will ultimately result in the dismissal of the charge or the entry of an adjudication of guilt. Pursuant to Tenn. Code Ann. § 40-35-209 and Tenn. Sup. Ct. R. 17, the district attorney general shall complete and file a uniform judgment document for each charge within 30 days of such dismissal or adjudication.

(4) The form of the order attached hereto is made a part hereof and incorporated herein by reference. The order will be provided to all trial judges of courts of record. [As adopted by order filed July 27, 2011, effective November 1, 2011; and amended by order filed December 19, 2012, effective April 1, 2013.]

Compiler's Notes. In its order filed December 19, 2012, the Supreme Court provided that: "On October 8, 2012, the Court filed an order soliciting public comments on proposed amendments to the order of deferral (judicial diversion) that Tennessee Supreme Court Rule 17A incorporates by reference. The proposed amendments were necessary due to recommendations made by interested persons and agencies following the Court's adoption of the order in 2011.

"After due consideration, the court had decided to adopt the amended order of deferral (judicial diversion), which is set out in the attached Appendix to this order [M2012-02132-SC-RL2-RL]. Because the District Attorneys

General Conference and several counties will be required to reprogram computer systems that record case dispositions, the effective date for the amended order shall be April 1, 2013.

"The Court hereby directs the Administrative Office of the Courts ('AOC') to notify the trial judges, court clerks, and affected agencies of the adoption of the amended order. The AOC shall also provide them with an updated instruction manual regarding the use of the order."

The amended order of deferral (judicial diversion) to Rule 17A promulgated by the Supreme Court in its order dated December 19, 2012, effective April 1, 2013, is set out following Rule 17A.

IN THE CRIMINAL/CIRCUIT COURT FOR _____ COUNTY, TENNESSEE

Case Number: _____ Count # _____ Counsel for the State: _____
Judicial District: _____ Judicial Division: _____ Counsel for the Defendant: _____
State of Tennessee _____ ☐ Retained ☐ Pub Def Appt ☐ Private Atty Appt
vs. _____ ☐ Counsel Waived ☐ Pro Se
Defendant: _____ Alias: _____ Date of Birth: _____ Sex: _____
Race: _____ SSN: _____ Relationship to Victim: _____ Victim's Age: _____
State ID #: _____ County Offender ID # (if applicable): _____ State Control #: _____
Arrest Date: _____ Indictment Filing Date: _____

ORDER OF DEFERRAL (JUDICIAL DIVERSION) ☐ Original ☐ Amended ☐ Corrected

On the _____ day of _____, 20____, the defendant:

<input type="checkbox"/> Pled Guilty <input type="checkbox"/> Pled Nolo Contendere	Indictment: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name AND TCA §: _____ Amended Offense Name AND TCA §: _____ Offense Date: _____ County of Offense: _____ Deferred Offense Name AND TCA §: _____ Deferred Offense: Class (circle one) A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
Was Found Guilty By: <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Bench Trial	

Upon review of the case, the court finds the facts stated above as well as the following (For Item 3, Check **ONE** Of The Two Boxes):

- The defendant is eligible for deferral of the prosecution pursuant to Tennessee Code Annotated section (T.C.A.) 40-35-313;
- The Tennessee Bureau of Investigation has certified (per attached certificate) that the defendant does not have a prior felony or Class A misdemeanor conviction;
- ☐ The defendant was not charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in Title 68, Chapter 11, Part 10; **OR**
☐ The defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by Title 68, Chapter 11, Part 10, whereupon a copy of this order shall be forwarded by the clerk to the department of health;
- The defendant consents to T.C.A. 40-35-313 deferral, as evidenced by the defendant's signature below; AND
- The defendant should be granted a deferral of charges pursuant to T.C.A. 40-35-313.

It is, therefore, **ORDERED** that the prosecution in this case is deferred pursuant to T.C.A. 40-35-313, and the defendant is placed on probation. The terms and conditions ordered by this court apply to the defendant's probation and are incorporated herein by reference thereto.

Probation Term: Total Length _____ Beginning Date _____ Ending Date _____ ☐ Supervised ☐ Unsupervised

Supervising Entity (unless otherwise provided to the defendant by the court): Name _____
Phone Number _____ Address _____

Defendant's Contact Information (unless otherwise provided to the probation officer by the court): Phone Number _____
Address _____

Costs	Concurrent with:	Restitution	Pretrial Jail Credit Period(s):
\$ _____ Sex Offender Tax (39-13-709)		Victim Name _____	From _____ to _____
\$ _____ Sex Offender Fine (40-24-108)		Address _____	From _____ to _____
\$ _____ Drug Testing Fee (39-17-420)			From _____ to _____
\$ _____ Treatment Expenses (40-35-313)	Consecutive to:		From _____ to _____
\$ _____ Supervision Fees (40-35-313)		Total Amount \$ _____	
\$ _____ Other: _____		Per Month \$ _____	From _____ to _____

Defendant

JUDGE'S NAME

Counsel for the Defendant

ENTER the _____ day of _____, 20____.

JUDGE'S SIGNATURE

Counsel for the State of Tennessee

Rule 18. Local Rules of Practice in the Trial Courts of Tennessee. —

(a) The judges in each judicial district shall adopt written uniform local rules prescribing procedures for

- (1) setting cases for trial;
- (2) obtaining continuances;
- (3) disposition of pre-trial motions;
- (4) settlement or plea bargaining deadlines for criminal cases;
- (5) preparation, submission and entry of orders and judgments.

Each judicial district may also adopt other uniform rules not inconsistent with the statutory law, the Rules of the Supreme Court, the Rules of Appellate Procedure, the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Juvenile Procedure, and the Rules of Evidence. Prior to the adoption or amendment of local rules of court, the judges of the judicial district shall solicit and consider input from members of the public and attorneys concerning the proposed rules or amendments. A judicial district may adopt uniform local rules that apply only to the circuit, chancery, criminal, or similar trial court divisions within the district.

(b) Not less than thirty (30) days prior to the effective date of any local rules, including any amendment thereto, the presiding judge of the judicial district shall cause the rules to be printed and made available to members of the public and to attorneys and shall file the rules with the administrative director of the courts in a format specified by the director.

(c) All local rules of court shall be adopted in accordance with this rule; any standing order, written policy, or similar document purporting to impose local rules shall be invalid. In addition, any local rule that is inconsistent with a statute or a procedural rule promulgated by the Supreme Court shall be invalid. [Adopted June 16, 1983; by order entered February 17, 2000; and amended by order entered January 29, 2004.]

Law Reviews. “Pre-Argument Conference Gets Everyone Talking (& Listening),” 27 No. 3 Tenn. B.J. 29 (1991).

NOTES TO DECISIONS**ANALYSIS**

1. Invalid Local Rules.
2. Summary Judgment.
3. Valid Local Rule.

1. Invalid Local Rules.

Where the employee sought workers’ compensation benefits for an injury she sustain while flipping a piece of wood, there were no depositions of medical experts; on review, a local rule of the 24th Judicial District which prohibited the taking of medical depositions in workers compensation cases absent leave of court, was declared invalid as it contradicted Tenn. R. Civ. P. 30.01. *Glisson v. Mohon Int’l, Inc.*, 185 S.W.3d 348, 2006 Tenn. LEXIS 180 (Tenn. 2006).

2. Summary Judgment.

Rule is not inconsistent with local rules of court that call upon counsel for the prevailing party to submit an order reflecting the trial court’s ruling; if, however, the local rules were inconsistent with the rule, the rule would prevail. *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 2014 Tenn. LEXIS 565 (Tenn. July 15, 2014).

3. Valid Local Rule.

Suspension of a bonding company for violating a local rule of court requiring an agent of the bonding company to be present at court appearances of defendants for whom the bonding company served as surety was appropriate because the local rule did not conflict with any statute and was not arbitrary, capricious, or unreasonable. The Tennessee statute pertain-

ing to bonding companies was supplemental to other laws providing for and regulating professional bail bondsmen and did not establish

exclusive grounds for suspension. In re Cumberland Bail Bonding, 599 S.W.3d 17, 2020 Tenn. LEXIS 143 (Tenn. Apr. 6, 2020).

Rule 19. Appearance *Pro Hac Vice* in Proceedings Before Tennessee Agencies and Courts by Lawyers Not Licensed to Practice Law in Tennessee. — A lawyer not licensed to practice law in Tennessee, licensed in another United States jurisdiction, and who either resides outside Tennessee or resides in Tennessee and has been permitted to practice in this State pursuant to Rule 7, section 10.07 of these Rules shall be permitted to appear *pro hac vice*, file pleadings, motions, briefs, and other papers and to fully participate in a particular proceeding before a trial or appellate court of Tennessee, or in a contested case proceeding before a state department, commission, board, or agency (hereinafter “agency”), if the lawyer complies with the following conditions:

(a) A lawyer not licensed to practice law in Tennessee and who either resides outside Tennessee or resides in Tennessee and has been permitted to practice in this State pursuant to Rule 7, section 10.07 of these Rules is eligible for admission *pro hac vice* in a particular proceeding pending before a court or agency of the State of Tennessee:

(1) if, in the case of a lawyer who resides outside Tennessee, the lawyer is licensed, in good standing, and admitted to practice before the court of last resort in another state or territory of the United States or the District of Columbia in which the lawyer maintains a residence or an office for the practice of law; or, in the case of a lawyer who resides in Tennessee and has been permitted to practice in this State pursuant to Rule 7, section 10.07 of these Rules, the lawyer is licensed, in good standing, and admitted to practice before the court of last resort in another state or territory of the United States or the District of Columbia in which the lawyer most recently maintained a residence or an office for the practice of law; and

(2) if the lawyer is in good standing in all other jurisdictions in which the lawyer is licensed to practice law; and

(3) if the lawyer has been retained by a client to appear in the proceeding pending before that court or agency.

(b) In its discretion, a state court or agency may, in a particular proceeding pending before it, deny a lawyer’s motion to appear *pro hac vice* only where:

(1) the applicant’s conduct as a lawyer, including conduct in proceedings in Tennessee in which the applicant has appeared *pro hac vice* and conduct in other jurisdictions in which the lawyer has practiced, raises reasonable doubt that the lawyer will comply with the Tennessee Rules of Professional Conduct and other rules and law governing the conduct of lawyers who appear before the courts and agencies of the State of Tennessee; or

(2) the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

In any proceeding in which a state court or agency denies a lawyer’s motion to appear *pro hac vice*, the court or agency shall set forth findings of fact and conclusions of law that constitute the grounds for its action. In addition, the court or agency shall send a copy of the order denying the motion to the Board of Professional Responsibility of the Supreme Court of Tennessee.

(c) A lawyer admitted pro hac vice under this Rule may not continue to so appear unless all requirements of the Rule continue to be met. Admission granted under this Rule may be revoked by the court or agency granting such admission upon appropriate notice to the lawyer and upon an affirmative finding by the court or agency that the lawyer has ceased to satisfy the requirements of this Rule. In any proceeding in which a court or agency revokes an admission pro hac vice, the court or agency shall set forth findings of fact and conclusions of law that constitute the grounds for its action; in addition, the court or agency shall send a copy of the order revoking the admission pro hac vice to the Board of Professional Responsibility of the Supreme Court of Tennessee.

(d) A lawyer seeking admission under this Rule shall file a motion in the court or agency before which the lawyer seeks to appear not later than the first occasion on which the lawyer files any pleading or paper with the court or agency or otherwise personally appears. In support of the motion, the lawyer shall file with the court or agency a certificate of good standing from the court of last resort of the licensing jurisdiction in which the lawyer principally practices and an affidavit by the lawyer containing the following information:

(1) the lawyer's full name, residence address, office address, any registration or identifying number associated with the lawyer's licensure in each jurisdiction in which the lawyer is licensed, the full name or style of the case in which the lawyer seeks to appear, and the name of the client or clients the lawyer seeks to represent;

(2) the jurisdictions in which the lawyer is or has been licensed to practice law, with dates of admission, and any other courts before which the lawyer has been or is generally admitted to practice (including, for example, membership in the bar of a United States District Court), with dates of admission, and a statement by the lawyer that the lawyer is in good standing in all other jurisdictions in which the lawyer is licensed to practice law;

(3) the full name or style of each case in which the lawyer has been admitted or sought to be admitted pro hac vice in any court or agency of the State of Tennessee within the preceding three years, the date of any such admission or the date of any such motion that was filed but not granted, and the status of any such case in which the lawyer was admitted;

(4) a statement concerning whether the lawyer has been denied admission pro hac vice or has had an admission pro hac vice revoked by any court in any jurisdiction and, if so, a full description of the circumstances, including the full name or style of the case;

(5) a statement concerning whether the lawyer has ever been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, by any similar lawyer disciplinary agency in any jurisdiction, or by any similar lawyer disciplinary authority (including, for example, any United States District Court), and, if so, a full description of the circumstances, including the full name or style of the matter;

(6) a statement concerning whether any disciplinary action or investigation concerning the lawyer's conduct is pending before the Board of Professional Responsibility of the Supreme Court of Tennessee, before any similar lawyer disciplinary agency in any jurisdiction, or before any similar lawyer disciplin-

any authority (including, for example, any United States District Court), and, if so, a full description of the circumstances, including the full name or style of the matter;

(7) a statement that the lawyer is familiar with the Tennessee Rules of Professional Conduct and the rules governing the proceedings of the court or agency before which the lawyer seeks to practice;

(8) a statement by the lawyer that the lawyer consents to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts or agencies of Tennessee in any matter arising out of the lawyer's conduct in the proceeding and that the lawyer agrees to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee;

(9) the name, address, telephone number, and Board of Professional Responsibility's registration number of a lawyer with whom the lawyer is associated in accordance with Section (g) of this Rule;

(10) a statement that the lawyer has paid all fees required by this Rule in connection with the motion for admission;

(11) at the option of the lawyer, any other information supporting the lawyer's admission; and

(12) a statement indicating service of the motion and all associated papers upon all counsel of record in the proceeding and upon the Board of Professional Responsibility of the Supreme Court of Tennessee.

(e) A lawyer who seeks or is granted admission under this Rule shall be subject to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts and agencies of Tennessee in any matter arising out of the lawyer's conduct in the proceeding.

(f) At or before the time the lawyer files a motion for admission and supporting papers under this Rule with the court or agency before which the lawyer seeks admission, the lawyer shall file with the Board of Professional Responsibility of the Supreme Court of Tennessee a copy of the motion and supporting papers filed under this Rule and shall pay to the Board a fee in an amount the total of which equals the fees required of Tennessee lawyers under Tennessee Supreme Court Rule 9, Section 10.2(c), Tennessee Supreme Court Rule 25, Section 2.01, and Tennessee Supreme Court Rule 33.01(C). This fee shall be used for purposes set forth in these respective Rules, and the Board of Professional Responsibility shall collect and remit the appropriate portion of any such fee to the Tennessee Lawyers' Fund for Client Protection and the Tennessee Lawyers Assistance Program. No applicant for admission under this Rule shall be required to pay more than one total fee in any one calendar year. All fees under this Rule shall be waived if the lawyer will not charge an attorney's fee in the proceeding; in such cases, however, the lawyer still must comply with the filing requirement of this paragraph.

(g) A motion for admission pro hac vice under this Rule shall not be granted unless the lawyer is associated in the proceeding with a lawyer licensed to practice law in Tennessee, in good standing, admitted to practice before the Supreme Court of Tennessee, and who resides in and maintains an office in Tennessee. Both the Tennessee lawyer and the lawyer appearing pro hac vice shall sign all pleadings, motions, and other papers filed or served in the

proceeding; the Tennessee lawyer, or another Tennessee lawyer acting on behalf of the first Tennessee lawyer at his or her request, shall personally appear for all court or agency proceedings, including all proceedings conducted pursuant to the authority of the court or agency, unless excused by the court or agency. The court or agency may establish conditions relating to the participation of associated counsel in an order granting admission under this Rule or otherwise.

(h) A trial or intermediate appellate court's denial of a motion to appear pro hac vice pursuant to paragraph (b), or a trial or intermediate appellate court's revocation of admission pro hac vice pursuant to paragraph (c), may be appealed pursuant to Rule 10, Tenn. R. App. P. An agency's denial of a motion to appear pro hac vice pursuant to paragraph (b), or an agency's revocation of admission pro hac vice pursuant to paragraph (c), may be appealed by filing a petition for judicial review pursuant to Tenn. Code Ann. § 4-5-322. A lawyer whose admission pro hac vice is denied or revoked by the Supreme Court of Tennessee may seek a rehearing on that issue pursuant to Rule 39, Tenn. R. App. P. [As added by order entered October 1, 1984; amended by order filed August 27, 2002, effective March 1, 2003; by order filed June 29, 2004, effective October 1, 2004; and by order filed February 4, 2013, effective February 4, 2013; by order filed August 18, 2014, effective upon filing; by order filed January 25, 2017, effective upon filing; and by order filed June 6, 2019, effective upon filing.]

Compiler's Notes. In its order filed October 10, 2016, the Supreme Court provided: "On September 7, 2016, the Court filed an order soliciting public comments on proposed amendments to Tennessee Supreme Court Rule 19 to eliminate a potential conflict between Rule 7, section 5.01(g)(8) and Rule 19 of the Rules of the Tennessee Supreme Court. The order set Monday, October 10, 2016, as the deadline for submitting comments on the proposed amendments."

"On September 28, 2016, the Knoxville Bar Association ("KBA") requested an extension of time to comment on the proposed amendments. After due consideration, the Court hereby grants the KBA's request. The deadline for submitting written comments on the proposed amendments is hereby extended until Thursday, November 10, 2016."

In its order filed January 25, 2017, the Supreme Court provided: "On September 7, 2016, the Court filed an order soliciting public comments on proposed amendments to Tennessee Supreme Court Rule 19 to eliminate a potential conflict between Rule 7, section 5.01(g)(8) and Rule 19 of the Rules of the Tennessee Supreme

Court. The order set October 10, 2016, as the deadline for submitting comments on the proposed amendments. On October 10, 2016, upon the request of the Knoxville Bar Association ("KBA"), the Court extended the comment period until November 10, 2016."

"The Court received three comments on the proposed amendments, comments from the KBA, the Tennessee Bar Association, and the Tennessee Board of Law Examiners. After due consideration, the Court hereby adopts the amendments to Tennessee Supreme Court Rule 19 as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

In its order filed June 6, 2019, the Supreme Court provided: "On March 29, 2019, the Court adopted amendments to Rule 7 of the Rules of the Tennessee Supreme Court. In light of these amendments, the references to Rule 7, section 5.01(g) in Rule 19 of the Rules of the Tennessee Supreme Court should be changed to Rule 7, section 10.07. Accordingly, the Court hereby amends Rule 19 of the Rules of the Tennessee Supreme Court in the form set out in the attached Appendix to this Order."

Rule 20. Appearance in the Trial and Appellate Courts of Tennessee by Nonresident Lawyers Admitted to Practice in Tennessee but Having No Office in This State. — A lawyer who is licensed to practice law in this state, in good standing, and admitted to practice before this Court, but

has no office in this State, may appear in any trial or appellate court of this State unless the court finds good cause to require that he or she associate a lawyer who maintains a law office in the State of Tennessee. [As amended by order November 30, 1993.]

Rule 21. Rule for Mandatory Continuing Legal Education.

Sec. 1. Commission on Continuing Legal Education.

1.01. There is hereby established the Tennessee Commission on Continuing Legal Education consisting of eleven (11) members, to be appointed by this Court. Nine (9) members shall be attorneys who are resident members of the Bar of this State (three of whom shall reside in each of the Grand Divisions of the State) and two shall be non-attorneys. [As amended by order filed July 1, 1993; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.02. The Commission shall have the following duties:

(a) To exercise general supervisory authority over the administration of this Rule;

(b) To adopt regulations subject to the approval of this Court, for the enforcement and application of this Rule, not inconsistent with this Rule; and

(c) To monitor developments in the operation of this Rule, and to design, promulgate for discussion, test, and recommend to this Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the Commission. In furtherance of this particular responsibility, the Commission may, with prior Court approval, from time to time, adopt by regulation, after notice and an opportunity to comment to the Bar and CLE providers in Tennessee, new accreditation standards, evaluation programs, and other similar programs for trial periods not to exceed 42 months in duration. [As amended by order filed December 10, 1998; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.03. All Commission members shall hold office for three (3) years and until their successors are appointed, to staggered terms of office. [As amended by order entered July 1, 1993; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.04. Any Commission vacancy shall be filled by this Court to serve until the expiration of the term in which the vacancy occurred. All members shall be eligible for reappointment for no more than one additional term. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.05. Officers of the Commission shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer. The Chairperson shall be appointed by this Court. Each of the other officers shall be elected by members of the Commission during their first meeting of each calendar year. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.06. Meetings of the Commission may be held at any time upon notification by any officer to the entire Commission. Votes may be cast concerning any action before the Commission by registering an affirmative or negative vote during a physical meeting, by electronic or telephonic means, or by mail. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.07. A quorum of six (6) members shall be required for any Commission action. A majority of the members in attendance at any Commission meeting having a quorum, but no less than four (4) affirmative votes, shall be necessary to approve any action. [As amended by order filed July 1, 1993; and amended by order filed December 16, 2014, effective January 1, 2015.]

1.08. Members of the Commission shall receive no compensation for their services but may be reimbursed by the Commission for their incidental travel and other expenses in accordance with the allowances approved by the Administrative Office of the Courts. [As amended by order filed February 17, 2000; and amended by order filed December 16, 2014, effective January 1, 2015.]

1.09. The Court shall appoint an Executive Director of the Commission, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the Executive Director shall report to the Commission, which shall conduct regular performance evaluations of the Executive Director and report such evaluations to the Court. The Executive Director may engage such staff as may be necessary to conduct the business of the Commission within the scope of this Rule. [As amended by order filed December 18, 2007, effective January 1, 2008; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

1.10. Communications to the Commission, any subcommittee thereof, or to the Commission's staff relating to the failure of any lawyer to comply with this Rule, or of any fraud upon the Commission shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any complainant or a witness.

Members of the Commission and its staff shall be immune from civil suit for any conduct in the course of their official duties. [Deleted by order filed December 20, 2005; and adopted by order filed December 16, 2014, effective January 1, 2015.]

1.11. [Deleted by order filed December 16, 2014, effective January 1, 2015.]

Sec. 2. Scope and Exemptions.

2.01. This Rule shall apply to every person whose qualifications to practice law are subject to the Rules of Professional Conduct of the Supreme Court of Tennessee. The exemptions contained herein shall apply only to the mandatory continuing legal education requirements of this Rule. [As amended by order filed July 1, 1993; and amended by order filed August 27, 2002, effective March 1, 2003; and amended by order filed December 16, 2014, effective January 1, 2015.]

2.02. The practice of law shall be defined as described in Rule 9, Section 10.3(e).

2.03. The Commission shall recognize the following exemptions:

(a) Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to this Rule;

(b) Members of the Armed Forces on active duty shall not be subject to this Rule. Any attorney claiming active duty military exemption shall provide to the Commission a copy of his/her military orders in order to qualify for exemption. An attorney who leaves active duty military service prior to September 1st of the compliance year shall not be entitled to the military exemption for that year. This exemption shall be claimed by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission;

(c) An attorney shall not be subject to the requirements of the Rule after age seventy (70), claiming application of the exemption. This exemption shall not include the calendar year in which the attorney becomes seventy (70) years of age. However, any attorney who reached age sixty-five (65) on or before December 31, 2014, shall also be eligible for exemption from the requirements of this Rule pursuant to the age-related exemption granted by the previous version of Rule 21 in effect on December 31, 2014 upon filing an application with the Commission. This exemption shall be claimed by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission;

(d) An attorney who is licensed to practice law in Tennessee but who resided outside of the State and did not practice Tennessee law during the compliance year may request an annual exemption from this Rule. This exemption shall be requested annually by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission;

(e) Full time Tennessee law school professors who did not engage in the practice of law during the compliance year shall not be subject to this Rule.

This exemption shall be claimed annually by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission;

(f) An attorney holding an elective office in the Executive or Legislative branches of government and who is prohibited by law from practicing law or who certifies that s/he has not practiced law during the compliance year is exempt while holding such office.

This exemption shall be claimed annually by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission;

(g) All Justices, Judges, and Magistrate Judges of the federal system shall not be subject to the requirements of this Rule in view of their required comparable continuing legal education programs.

This exemption shall be claimed annually by completing the pertinent section on the Annual Report Statement and filing the Statement with the Commission; and

(h) An attorney who is no longer practicing law in any United States Jurisdiction and who has placed his/her Tennessee law license on inactive status with the Tennessee Board of Professional Responsibility may claim exemption from this Rule by completing and filing the Request for Inactive Status form with the Commission. The Request for Inactive Status form can

be found on the CLE website – www.cletn.com. [As amended by order entered June 22, 1988; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

2.04. An attorney may petition the Commission in writing for “Exceptional Relief” from this Rule and may be granted Exceptional Relief upon majority vote of the Commission. An attorney applying for Exceptional Relief, including requests for appropriate waivers, extensions of time, hardship and extenuating circumstances, shall file with the Commission a written statement showing good cause why that individual should be considered for “Exceptional Relief” and shall specify in detail the particular relief being sought. [As amended by order filed December 10, 1998; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

Sec. 3. Continuing Legal Education Requirement.

3.01.

(a) Unless otherwise exempted, each attorney admitted to practice law in the State of Tennessee shall obtain by December 31st of that compliance year a minimum of fifteen (15) hours of continuing legal education. Of those fifteen hours, three (3) hours shall be approved for ethics/professionalism credit (“EP credit”) and twelve (12) hours shall be approved for General credit.

(b) All EP credit shall be designated as “Dual” credit as defined in the Commission’s regulations. Dual credit shall first be applied as EP credit and any remaining credit shall be applied as General credit.

(c) Each attorney, who is not exempt from this Rule, shall earn a minimum of seven (7) hours of Live CLE credit each compliance year and may count a maximum of eight (8) hours of Distance Learning credits towards each compliance year.

(d) An attorney who is eligible for an exemption must annually file a claim of exemption on or before March 31st. Applications received after the deadline are assessed late fees in accordance with the compliance timetable included with the Annual Report Statement.

(e) An attorney who has filed a previous claim of age exemption shall not be required to file an annual exemption statement. [As amended by order filed April 7, 1992; and by order filed March 21, 2002; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

3.02.

(a) An attorney who has a disability that prevents compliance with Section 3.01(a) may annually file a Request for Substitute Program Based Upon Disability with the Commission. The request must include a statement from a medical provider in support of the relief requested. An attorney shall provide an updated statement of disability, each compliance year, when filing his or her Annual Report Statement.

The Request for Substitute Program Based upon Disability form can be found on the CLE website – www.cletn.com.

(b) An attorney who has a disability that prevents compliance with Section 3.01(c) may file a Request for a Substitute Program in Lieu of Attendance form and shall therein set out continuing legal education plans tailored to their

specific abilities. The Commission shall review and approve or disapprove such plans on an individual basis. Denial of any requested substitute for attendance will be accompanied by reasons for the denial of the application and suggestions how the attorney might improve his or her application for an approved substitute for attendance.

This is a one year exemption and must be renewed annually using the same initial process. The Request for Substitute Program in Lieu of Attendance form can be found on the CLE website – www.cle tn.com. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

Sec. 4. Continuing Legal Education Credits.

4.01. Credit will be given only for continuing legal education activities approved by the Commission. [Amended by order filed December 16, 2014, effective January 1, 2015.]

4.02.

(a) CLE credit shall be earned by attending CLE courses approved by the Commission, subject to the limitations set forth in this Rule.

(b) Up to fifteen (15) hours of credit earned in a compliance year in excess of the fifteen (15) credit annual requirement may be carried forward for credit in the succeeding compliance year, but only for the succeeding compliance year. Such hours must, however, be reported and paid.

(c) A maximum of eight (8) hours of Distance Learning credit will be applied to establish an attorney's compliance. A maximum of eight (8) hours of Distance Learning credit can be carried forward to the subsequent compliance year.

(d) Any attorney required to earn CLE credits who receives an Annual Report Statement showing less than twelve (12) General credits and three (3) EP credits or that a fee is due shall sign and return the Annual Report Statement as directed in the Statement.

(e) CLE credit should be reported at the time that the CLE credit is earned or as soon thereafter as is practical, but no later than one year from the date that the CLE credit was earned. Failing to submit CLE credit earned in the compliance year on or before December 31st of the compliance year may result in non-compliance fees as set forth in Section 7. [As amended by orders filed June 22, 1988 and April 7, 1992; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.03.

(a) Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by five (5) or more pages of thorough, high quality, readable and carefully prepared written materials will qualify for CLE credit on the basis of four (4) hours of credit for each hour of presentation. Presentations accompanied by less than five pages of outlines, or not accompanied by written materials, will qualify for CLE credit on the basis of two (2) credits per hour of presentation. Repeat presentations qualify for one-half of the credits awarded for the initial presentation. CLE credit is earned as of the date the CLE presentation occurs.

(b) Credit may also be earned through teaching in an approved law school, or teaching law-related courses offered for credit toward a degree at the undergraduate or graduate level in an approved college, university or community college. The Commission may in its discretion award four (4) hours of CLE credit for each hour of academic credit awarded by the law school, college, university or community college for the course(s) taught.

(c) Credit may be earned for judging or coaching moot court or a mock trial at an approved law school. Credit shall be earned at the rate of one hour of EP CLE credit for five (5) hours of judging or coaching. A maximum of three (3) hours of CLE credit may be earned in any compliance year. [As amended by order filed December 10, 1998; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.04. Credit may be earned through formal enrollment and education of a postgraduate nature, either for credit or by audit, in an approved law school. The Commission will award one (1) credit hour for each hour of class attendance.

Online course credit is subject to the eight (8) hour per year limitation. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.05. Credit may be earned through service as a bar examiner in Tennessee or in any of the sister states. The Commission will award twelve (12) hours of General credit and three (3) hours of EP credit annually for the preparation and grading of one or more bar examination questions during a given compliance year. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.06. An attorney may receive up to a maximum of twelve (12) hours of General continuing legal education credit, and a maximum of three (3) hours of EP credit, for passing the bar examination of any state or upon passage of the Uniform Bar Examination including compliance with the requirements of Supreme Court Rule 7, Sections 1.04, 3.05 and Article V. Up to six (6) hours of General credit may be given for successful passage of any examination required by a specialist certification program approved under this Rule, or the examination for admission to practice before the United States Patent and Trademark Office. In addition, an attorney may receive three hours of EP credit for passing either the ethics portion of a bar examination of any state or the Multi-state Professional Responsibility Examination. The maximum credit to be earned by passing any and all bar examinations in a given compliance year is twelve (12) hours of General credit and three (3) hours of EP credit. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.07. The Commission may, in its discretion, award:

Up to one-half of the annual requirement to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules or regulations. The Commission is authorized to promulgate regulations to implement this provision and to address any further public service credit. [As amended by order filed December 10, 1998; by order filed April 3, 2009; by order filed April 30, 2012, effective

January 1, 2012, nunc pro tunc; and by order filed January 11, 2013, effective from July 1, 2013, through December 31, 2014; as amended by order filed July 1, 2014, effective July 1, 2014; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019; amended by order filed and effective April 25, 2019.]

4.08.

(a) Up to one-half of the annual requirement (six (6) General credits and one and one-half (1.5) EP credits) to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules, or regulations.

(b) Up to one-half of the annual requirement (six (6) General credits and one and one-half (1.5) EP credits) for published writings concerning substantive law, the practice of law, or the ethical and professional responsibilities of attorneys if the writing is published in approved publications intended primarily for attorneys. Credit shall be awarded in the amount of one (1) hour for every 1,000 words, not including footnotes, endnotes, or citations of authority. Credit shall not be awarded to a named author when the actual principal author was another person acting under the direction or supervision of the named author. In requesting credit under this subsection, the attorney shall provide the Commission with an affidavit stating the facts of authorship.

(c) An annual maximum of three (3) EP credits earned at the rate of one hour of credit for every five billable hours of pro bono legal representation provided through court appointment, an organized bar association program, or an approved legal assistance organization, or of pro bono mediation services as required by Tennessee Supreme Court Rule 31 or the Federal Court Mediation Programs established by the United States District Courts in Tennessee. Credits awarded pursuant to this paragraph shall be exempt from the per-hour fee imposed by Section 8 of this Rule.

An “approved legal assistance organization” for the purposes of this section is an organization or professional association that (1) provides pro bono legal services and (2) is approved by this Court. An organization which receives funding from the Legal Services Corporation is presumptively approved under this section. Organizations or groups which do not provide legal assistance as their primary service or business but wish to develop an initiative or project designed specifically to provide pro bono legal services may apply to be approved by this Court under this section. Any organization seeking approval under this section must file a petition with the clerk of this Court. The Application for Tennessee Supreme Court Approval of Legal Assistance Organization form can be found on the CLE website – www.cle tn.com.

(d) An attorney who provides indigent defense representation at a reduced hourly rate may receive EP credit for the uncompensated portion of the representation based upon the Commission’s formula as set out in the Request for Earned Indigent Defense Credit form. A maximum of three (3) hours of credit may be earned in any compliance year. Indigent Defense credit hours earned in a compliance year in excess of the three (3) credit annual maximum may be carried forward for credit in the succeeding compliance year, but only for the succeeding compliance year and only up to three (3) credit hours. The

form Request for Earned Indigent Defense Credit can be found on the CLE website – www.cletn.com.

(e) An attorney may receive a combined maximum of three (3) credits of pro bono and/or indigent defense credit in any compliance year.

(f) One (1) year of CLE credit may be awarded for completion of a bar review course. An attorney shall not receive bar review credit and bar exam credit in the same compliance year. Bar review courses earned via an approved Distance Learning format are subject to the eight (8) hour per year limitation. Online bar review courses that do not satisfy the Distance Learning format criteria will not be approved for CLE credit. [Added by order entered December 30, 1999, effective January 7, 2000; as amended by order filed March 4, 2008; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

4.09. A maximum of eight (8) hours of credit per year earned in a Distance Learning format approved by the Commission pursuant to section 5.01(f) may be applied to the annual requirements. [Amended by order filed and effective April 25, 2019.]

Sec. 5. Continuing Legal Education Providers.

5.01. The following standards will govern the approval by the Commission of continuing legal education activities:

(a) The activity must have significant intellectual or practical content and its primary objective must be to enhance the participant's professional competence as an attorney.

(b) The activity must deal primarily with matters related to substantive law, the practice of law, professional responsibility or ethical obligations of attorneys.

(c) The activity must be offered by a provider having substantial recent experience in offering continuing legal education or demonstrated ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity.

(d) The activity itself must be conducted by an individual or group qualified by practical or academic legal experience. The program, including the named advertised instructors, must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(e) Textual materials should be made available in written or electronic form to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable.

(f) The activity must be conducted in a format approved by the Commission including, but not limited to, online and web based programs.

(g) Twelve (12) activities are eligible for Live CLE credit. See Section 3.01 for requirement. The twelve (12) activities are:

(1) Traditional in-classroom courses.

A maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. See Section 3.01(c) of this Rule;

(2) Teaching at an approved CLE activity.

A maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. See section 4.03(a) of this Rule (includes video re-play with a qualified commentator); see Regulation 3A for commentator requirements;

(3) Teaching at an approved educational institution.

A maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. See section 4.03(b) of this Rule;

(4) Pro Bono representation.

A maximum of three (3) EP credits may be applied to any compliance year. See section 4.08(c) of this Rule;

(5) Indigent Defense representation (uncompensated portion only).

A maximum of three (3) EP credits may be applied to any compliance year. See section 4.08(d) of this Rule;

(6) Published Writing.

A maximum of six (6) General and one and one-half (1.5) EP credits may be applied to any compliance year. See section 4.08(b) of this Rule;

(7) Formal enrollment and education of a postgraduate nature for credit or audit at an approved educational institution.

Credit is earned hour for hour. See section 4.04 of this Rule. For Live courses, a maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. For online courses, via an approved Distance Learning format, there is a maximum of eight (8) hours of credit each compliance year. See section 3.01(c) of this Rule;

(8) Service as a Bar Examiner.

A maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. See section 4.05 of this Rule;

(9) Service on the Board of Professional Responsibility or one of its hearing committees.

Credit is limited to three (3) EP credits in any compliance year. See section 4.07 of this Rule;

(10) Participation as a member of governmental commissions, committees, or other governmental bodies.

A maximum of six (6) General and one and one-half (1.5) EP credits may be applied to any compliance year. See section 4.08(a) of this Rule;

(11) Completion of Bar Review course.

For Live courses, a maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. See section 4.06 of this Rule. For online courses, via an approved Distance Learning format, there is a maximum of eight (8) hours of credit each compliance year. See section 3.01(c) of this Rule; and

(12) Successful completion of a bar examination, specialist certification program, and/or examination for admission to practice before the United States Patent and Trademark Office. A maximum of twelve (12) General credits and three (3) EP credits may be applied to any compliance year. Bar review course credit and bar exam credit cannot both be claimed in the same compliance year. See section 4.08(f).

(h) Two (2) categories of activities eligible for Distance Learning CLE

credit. See Section 3.01 for requirement. Those two (2) categories are:
(1) “real time” or “streamed” seminars whether through “conference call” or viewed through a computer or portable video device via the internet (“web-cast”), and
(2) Online, computer-based audio/video presentations, whether pre-recorded or not, that provide some form of interactive component and a completion certification from the sponsor.

(i) No activity consisting solely of the viewing or hearing of pre-recorded material will be awarded credit.

The following types of courses and online formats are not eligible for CLE credit: YouTube videos, self-study courses, pre-recorded courses without interactivity, courses delivered as on-demand without interactivity, and courses delivered through an electronic device without interactivity.

(j) Activities that cross academic lines, such as accounting-tax seminars, may be considered for approval. [As amended by order entered December 30, 1999, effective January 7, 2000; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

5.02. Tennessee does not recognize presumptive approval status for providers. [Amended by order filed December 16, 2014, effective January 1, 2015.]

5.03. Tennessee does not recognize presumptive approval for any activity or program. [Amended by order filed December 16, 2014, effective January 1, 2015.]

5.04. The Commission may at any time re-evaluate a program and revoke specific approval of any particular seminar. [Amended by order filed December 16, 2014, effective January 1, 2015.]

5.05.

(a) Any provider desiring to advertise Commission approval of a course, program, or other activity, shall submit an application for such permission and supporting documentation electronically or on the Uniform Application for Accreditation at least forty-five (45) days prior to the date on which the course or program is scheduled. Documentation shall include a statement of the provider’s intention to comply with the accreditation standards of this Rule, copies of programs and written materials distributed to participants at the two most recently produced programs, if available, or an outline of the proposed program and list of instructors if the provider has not produced previous programs, and such further information as the Commission shall request. The staff of the Commission will advise the provider whether the activity is approved or disapproved in writing by mail or by electronic means within thirty (30) days of the receipt of the completed application.

(b) Providers denied approval of a program or activity may appeal such a decision by submitting a letter of appeal to the Executive Director within fifteen (15) days of the receipt of the notice of disapproval. Within thirty (30) days of the receipt of the appeal, the Executive Director shall make a new decision which shall be promptly delivered to the provider. Any adverse decision may be appealed to the full Commission for final decision.

(c) Any provider may submit to the Commission the Uniform Application for Accreditation seeking approval of a program after the program is con-

ducted. The form is available on the Becoming a Provider page on the Commission's website – www.cletn.com.

(d) An attorney licensed to practice in Tennessee who has attended an out-of-state CLE activity not approved in advance by the Commission shall submit a detailed agenda and speaker biographies for the purpose of obtaining accreditation of the course after the program is conducted. All rules pertaining to course accreditation shall apply. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

5.06.

(a) The provider of a continuing legal education activity approved in advance may advertise or indicate approval of an activity, as follows: "This course has been approved by the Tennessee Commission on Continuing Legal Education for a maximum of ____ hours of credit."

(b) Any out-of-state provider that holds a program in Tennessee and does not obtain program accreditation shall include a statement on any program advertisement:

- (1) "This program is not accredited in Tennessee"; or
 - (2) "We intend to seek accreditation for this program in Tennessee"; or
 - (3) "This program is not being submitted for accreditation in Tennessee".
- [Amended by order filed December 16, 2014, effective January 1, 2015.]

Sec. 6. Annual Report.

6.01. On or before February 28 of each year, the Commission shall prepare and send an Annual Report Statement to each attorney covered by this Rule requesting information concerning the attorney's compliance with Section 3.01 of this Rule in the preceding calendar year. The Annual Report Statement shall be mailed to the attorney's address as shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 10.1, or to the attorney's last known address as shown in the MCLE database. Service of the Annual Report Statement and any other notices required or provided for by this Rule upon any attorney may also be made by electronic means. All attorneys shall maintain a current e-mail address and provide updated information upon request from the Commission. Failure to receive the Annual Report, sent to the attorney's last known address, does not alleviate the attorney's obligation to satisfy the requirements set forth in this Rule, including the requirements of section 6.02. [As amended by order filed June 22, 1988; and by order filed March 21, 2002; and by order filed August 18, 2014, effective upon filing; and amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

6.02. On or before March 31st, each attorney shall complete the Annual Report Statement, indicating his or her completion of, exemption from, or approved substitute for accredited continuing legal education during the preceding calendar year, and shall deliver the completed Annual Report Statement to the Commission. The completed Annual Report Statement shall disclose all CLE hours earned during the preceding calendar year, including any hours to be carried forward to the following year. Any attorney whose Annual Report Statement demonstrates compliance with Section 3.01 of this

Rule, and whose Annual Report Statement demonstrates that all fees due the Commission for the preceding calendar year have been paid, shall be exempt from the requirement to sign and deliver to the Commission the Annual Report Statement described herein.

Any attorney who fails to meet the March 31st deadline who has not previously been assessed the one hundred dollar (\$100.00) fee for the applicable compliance year shall be assessed the one hundred dollar (\$100.00) fee on April 1st. The one hundred dollar (\$100.00) fee shall be due and payable on April 1st. [As amended by order filed June 22, 1988; and by order filed March 21, 2002; and by order filed August 18, 2014, effective upon filing; and amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

6.03. The Annual Report Statement shall reflect any unpaid course reporting fees and any non-compliance fee assessed pursuant to Section 7.03 along with a schedule of additional penalties which will result from continued non-compliance. [As amended by order filed June 22, 1988; and by order filed March 21, 2002; and by order filed August 18, 2014, effective upon filing; and amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

6.04. The files and records of the Commission are deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission; statistical abstracts may, however, be drawn therefrom in an anonymous fashion. [Adopted by order filed December 16, 2014, effective January 1, 2016.]

Sec. 7. Non-compliance and Sanctions

7.01. By April 30 of each year, the Commission shall compile:

(a) A list of those attorneys who did not timely file an Annual Report Statement for the preceding calendar year, including attorneys who failed to timely claim an exemption.

(b) A list of those attorneys who have not complied with the requirements of Section 3.01 of this Rule for the preceding calendar year; and

(c) A list of those attorneys who have not paid all fees due under Section 8.03 of this Rule. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.02. By April 30 of each year, the Commission shall serve each attorney listed on any of the three foregoing lists a Notice of Non-Compliance requiring the attorney to remedy his/her deficiencies on or before May 31 of that year. The notice shall be served upon the attorney by registered or certified mail, return receipt requested, at the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 10.1 or to the attorney's last known address as shown in the MCLE database.

Failure to receive the Notice of Non-Compliance, sent to the attorney's last known address, does not alleviate the attorney's obligation to satisfy the requirements set forth in this Rule, including the requirements of section 7.04. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.03. Each attorney who is subject to the Tennessee CLE requirements who does not satisfy the full number of required hours by December 31 of the

previous compliance year shall be assessed an Initial Non-Compliance Fee of One Hundred Dollars (\$100) on January 1 immediately following the end of the compliance year. Any Initial Non-Compliance Fee shall be paid on or before March 31 of that year. If any attorney shows to the satisfaction of the Executive Director of the Commission that the Notice of Non-Compliance was erroneously issued, the Initial Non-Compliance Fee shall not be due. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.04. Each attorney to whom a Notice of Non-Compliance is issued on April 30, who was not previously assessed the \$100 non-compliance fee on January 1st, shall pay to the Commission a non-compliance fee of One Hundred Dollars (\$100). Said fee shall be assessed on the Notice of Non-Compliance. In order to establish compliance, attorneys shall file a valid statement of exemption or an Affidavit of Compliance with the Commission on or before May 31 of that year showing that he or she has remedied his/her deficiencies. In addition, any attorney who receives a Notice of Non-Compliance showing a fee due to the Commission shall pay the full amount of the fee by May 31st as part of establishing his/her compliance. In the event an attorney fails to timely claim an exemption or remedy his/her deficiencies, by the May 31 deadline, fails to pay any fee owing to the Commission or fails to timely file an Affidavit of Compliance, the attorney shall pay to the Commission an additional Continuing Non-Compliance Fee of Two Hundred Dollars (\$200).

The Two Hundred Dollar Continuing Non-Compliance Fee shall be due and payable on June 1st. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.05. On or before July 1 of each year, the Commission shall prepare a draft Suspension Order listing all attorneys who were issued Notices of Non-Compliance and who failed to remedy their deficiencies by May 31. The Commission shall submit the draft Suspension Order to the Supreme Court for informational purposes. The Commission also shall mail a copy of the draft Suspension Order to each attorney named in the draft Suspension Order by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Supreme Court Rule 9, Section 10.1 or to the attorney's last known address as shown in the MCLE database. Failure to receive a copy of the draft Suspension Order, sent to the attorney's last known address, does not alleviate the attorney's obligation to satisfy the requirements set forth in this Rule. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.06. On or before August 10 of each year, each attorney listed in the draft Suspension Order shall file an Affidavit of Compliance in a form acceptable to the Commission showing compliance with Section 3 of this Rule for the preceding calendar year or a valid statement of exemption. Upon the Commission's approval of the Affidavit of Compliance and upon the attorney's payment of all outstanding fees, the Commission shall remove the attorney's name from the list of potential suspensions contained in the draft Suspension Order. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.07. On August 15 of each year, the Commission shall submit to the Supreme Court a final Suspension Order listing all attorneys with active Tennessee law licenses who failed to comply with this Rule for the preceding calendar year. Also by August 15, the Commission shall notify the Board of Professional Responsibility of the names of all licensed attorneys who have retired, taken inactive status, been suspended, or whose license to practice law in this state is otherwise inactive, and who failed to comply with the requirements of this Rule. The Supreme Court will review the final Suspension Order and, upon the Court’s approval, shall enter the Suspension Order suspending the law license of each attorney listed in the order. The Board of Professional Responsibility shall not reactivate the license of any attorney whose license is suspended pursuant to this Rule until the Commission certifies completion of a program of remedial continuing legal education satisfactory to the Commission. [Amended by order filed December 16, 2014, effective January 1, 2016.]

7.08. Each attorney named in the final Suspension Order entered by the Court or whose name is submitted to the Board of Professional Responsibility as ineligible for reactivation for failure to meet the requirements of this Rule shall pay to the Commission a Five Hundred Dollar (\$500) Suspension Fee as a condition of reinstatement of his or her law license. The Suspension Fee shall be paid in addition to the Initial Non-Compliance Fee (\$100) and in addition to the Continuing Non-Compliance Fee (\$200). [Amended by order filed December 16, 2014, effective January 1, 2016.]

7.09. Payment of all fees imposed in this section shall be a requirement for compliance with this Rule. [Amended by order filed December 16, 2014, effective January 1, 2016.]

7.10. An attorney suspended or made ineligible for reactivation by the Commission pursuant to this Rule may file with the Commission an application for reinstatement demonstrating compliance with Section 3.01 of this Rule. If the application is satisfactory to the Commission, if the attorney is otherwise eligible for reinstatement, and if the attorney has paid in full all fees due under this Rule, the Commission will recommend to the Supreme Court that the Court reinstate the attorney’s law license. [Amended by order filed December 16, 2014, effective January 1, 2016.]

7.11. An attorney may address the Commission, by telephone during the Commission’s scheduled monthly meeting, in regard to a recommendation of suspension or a recommendation against reinstatement. Additionally, any attorney not finding suitable relief before the Commission may petition the Supreme Court for modification or reversal of actions of the Commission. [Amended by order filed December 16, 2014, effective January 1, 2016; amended by order filed and effective April 25, 2019.]

7.12. No attorney suspended under this Rule 21 may resume practice until reinstated by Order of the Supreme Court. [Amended by order filed December 16, 2014, effective January 1, 2016.]

Sec. 8. Financing.

8.01. The Commission shall be adequately funded to enable it to perform its duties in a financially independent and responsible manner. [Amended by order filed December 16, 2014, effective January 1, 2015.]

8.02.

(a) Providers of CLE programs held within the State of Tennessee as a condition of accreditation shall agree to remit to the Commission an alphabetical list of attendees and to pay a fee of \$2.00 per approved credit hour for paper filings and a fee of \$1.00 per approved credit hour for electronic filings for each attorney licensed in Tennessee who attends the program. This provider's fee, along with the list of attendees, shall be submitted within thirty (30) days after the program is held.

Providers submitting attendance for any course, whether held within the state or outside of the state, more than forty-five (45) days after completion of the course shall pay as a late fee one additional dollar per credit hour per attorney. All attendance shall be reported within one year of the date of the completion of the course. Attendance submitted more than one year after the date of completion of the course will not be posted.

(b) Information contained in the attendance report required by this section or any Commission requirement under this Rule, or obtained by the Commission through analysis or comparison of such reports or information shall be deemed confidential. [As amended by order filed April 7, 1992; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

8.03. Attorneys attending approved out-of-state CLE programs, or other programs for which the sponsor does not report and pay the per-hour fee, shall be responsible for remitting their individual fees at the rate set under Section 8.02. This fee shall be paid at the time of, and along with, the report of such hours. All attendance shall be reported within one year of the date of completion of the course. Attendance submitted more than one year after the date of completion of the course will not be posted. [As amended by order filed September 21, 2010, effective October 1, 2010; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

8.04. The Commission will review the level of the fees at least annually and adjust the levels as necessary to maintain adequate finances for prudent operation of the Commission. [Amended by order filed December 16, 2014, effective January 1, 2015.]

8.05. The Commission shall deposit all funds collected hereunder with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Commission. Withdrawals from those funds shall only be made by the Commission for the purposes set forth in this Rule, and for such other purposes as this Court may from time to time authorize or direct. [Added by order filed June 28, 2002, effective July 1, 2002; and amended by order filed December 16, 2014, effective January 1, 2015.]

Sec. 9. Effective Dates of the Rule.

9.01. The establishment of the program for Mandatory Continuing Legal Education for attorneys licensed in Tennessee took effect on January 1, 1987. This Rule shall continue until such time as the Supreme Court shall determine that its program is no longer in keeping with the Court's responsibility to the

legal profession in Tennessee and the public which it serves. [As amended by orders filed October 5, 1988 and October 29, 1991; and amended by order filed December 16, 2014, effective January 1, 2015.]

Sec. 10. Annual CLE Compliance Summary.

10.01. Notwithstanding any other provision of this Rule to the contrary, the Commission shall publish an **Annual CLE Compliance Summary** of the activities of the Commission and the CLE reports and requests for exemption received by the Commission during the preceding compliance year. As part of this summary, the Commission shall report on the following topics:

- (a) The number of courses approved and rejected for accreditation;
- (b) The number of providers from whom lawyers holding a Tennessee license have received CLE credit;
- (c) The number of General and EP credit hours earned by lawyers holding a Tennessee license, both in the aggregate and in the following general categories:
 - (1) Live credit programs;
 - (2) Distance Learning credit programs broken down by the following categories:
 - (i) online computer interactive;
 - (ii) webinars; and
 - (iii) telephone conference calls;
 - (3) pro bono legal representation;
 - (4) teaching;
 - (5) completion of a law-related course broken down by the following areas:
 - (i) bar review course;
 - (ii) bar exam; and
 - (iii) postgraduate course;
 - (6) service to the bar in the following areas:
 - (i) bar examiner;
 - (ii) governmental commissions, committees, or other governmental bodies; and
 - (iii) Board of Professional Responsibility or as a hearing committee member; and
 - (7) published author;
- (d) The number of courses offered per provider and the attendance figures based on the categories above;
- (e) The number of lawyers holding a Tennessee license who have been granted an exemption for the previous compliance year; and
- (f) The number of requests for exceptional relief granted by the Commission during the previous compliance year.

The Commission shall also report generally on the substantive content areas in which CLE credits are being earned and reported. The Commission's report relating to the preceding compliance year shall be published on its website by October 31st. [Amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

Sec. 11. Identification of Specialists.

11.01. Lawyers licensed to practice law in Tennessee may be certified as being a legal specialist by any organization that has been accredited by the American Bar Association's House of Delegates to award specialist certifications to lawyers. [Adopted by order filed December 16, 2014, effective January 1, 2015.]

11.02. Each lawyer who has received a certification as a specialist shall register the certification with the Commission. The Commission shall confirm that the certification presented by the specialist has been issued from an organization that has been accredited by the American Bar Association's House of Delegates to award specialist certifications to lawyers. However, the Commission shall have no authority to certify any lawyer practicing in this State as being a specialist in any area of law. [Adopted by order filed December 16, 2014, effective January 1, 2015.]

11.03. Upon confirmation that a lawyer has received a specialist certification from an appropriate certifying organization, the Commission shall record the following information in the form of a Roll of Certified Specialists:

- (a) the lawyer's name;
- (b) the lawyer's Board of Professional Responsibility registration number;
- (c) the state and county in which the lawyer maintains the lawyer's principal office;
- (d) the name, address, and a link to the current website of the certifying organization;
- (e) the area or areas of law in which the lawyer has obtained a specialty certification; and
- (f) the date on which the lawyer obtained the specialty certification.

[Adopted by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

11.04. Each lawyer shall renew the lawyer's registration annually with the Commission and, in so doing, shall represent that the specialty certification remains valid. If a lawyer's certification of specialty has expired, or is withdrawn or revoked for any reason, the lawyer must report such fact to the Commission within fifteen (15) days of the expiration, withdrawal, or revocation. If a lawyer fails to renew the specialty certification, or if the lawyer notifies the Commission of the expiration, withdrawal, or revocation of a specialty certification, the Commission shall immediately remove the lawyer's information from the Roll of Certified Specialists. [Adopted by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

11.05. No lawyer shall at any time represent that the lawyer is a specialist in any area of law without first having a current registration of a valid certification on file with the Commission. [Adopted by order filed December 16, 2014, effective January 1, 2015.]

11.06. The Commission shall maintain the Roll of Certified Specialists, taking special care to ensure the accuracy and timeliness of information contained therein. The Commission shall also make the Roll of Certified Specialists available for public inspection and shall publish the Roll from time to time. The Commission may satisfy the obligation to publish the Roll of Certified Specialists by maintaining the Roll on the Commission's website -

www.cletn.com. [Adopted by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

11.07. The Commission, subject to the approval of the Court, may establish and collect reasonable fees from lawyers seeking to register, or re-register, any specialty certification to offset the costs of administering the procedures set forth in this Section. [As adopted by order filed September 25, 1986 and designated by orders entered Rule 21: September 26 and 29, 1986; and amended by orders entered June 22, 1988, July 25, 1988, October 5, 1988, March 1, 1991, and October 29, 1991, April 7, 1992, April 17, 1992, July 1, 1993, and December 14, 1994; and amended by order filed December 16, 2014, effective January 1, 2015; amended by order filed and effective April 25, 2019.]

Compiler's Notes. In its order filed August 30, 2013, the Supreme Court provided that: "On August 30, 2013, the Court adopted revised Tenn. Sup. Ct. R. 9, effective January 1, 2014. The Court has determined that certain revisions are necessary to Tenn. Sup. Ct. R. 21, 33, and 43 in order to make those Rules consistent with revised Tenn. Sup. Ct. R. 9.

"After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 21, 33, and 43 as set out in the attached Appendix to this Order. The effective date of these amendments is January 1, 2014."

The order added Rule 7, § 7.12, effective January 1, 2014.

In its order filed July 1, 2014, the Supreme Court provided that: "On January 11, 2013, the Court filed an order granting a petition filed by the Commission on Continuing Legal Education and Specialization ('Commission'). In summary, the Commission's petition had asked the Court to amend Tenn. Sup. Ct. R. 21, § 4.07 to authorize the Commission to award continuing legal education credits to lawyers who participate as a mentor or mentee in a mentoring program meeting the standards established by the Commission. In granting the petition, the Court amended Tenn. Sup. Ct. R. 21, § 4.07 by adding a new paragraph (d), and the Court also approved the Commission's proposed Regulation 5K ('Mentoring Programs'). Pursuant to the Court's order, the new section 4.07(d) and Regulation 5K took effect on July 1, 2013, but the Court's order also provided that those provisions would expire on December 31, 2014, unless affirmatively readopted by the Court.

"On May 21, 2014, the Commission filed a motion asking the Court to extend the effective date of section 4.07(d) and Regulation 5K for a period of two additional years. In the motion, the Commission reported on the progress that has been made in the development of mentoring programs in the State of Tennessee, and the motion went on to state that '[t]he extension of the preliminary effective date for two (2) years to December 31, 2016, would facilitate greater participation now that much of the initial planning and development necessary for implemen-

tation has been accomplished.' The motion also stated that the extension would allow for 'more meaningful program evaluation and feedback.'

"After due consideration, the motion is hereby granted. The effective date of section 4.07(d) and Regulation 5K is hereby extended until December 31, 2016, at which time they shall expire unless affirmatively readopted by the Court."

In its order filed December 16, 2014, the Supreme Court stated, in part: "The amended rules adopted herein are intended to apply to the year beginning on January 1, 2015 and to succeeding years. For that reason, and at the request of the Commission, the Court hereby sets the following effective dates for the amendments. The amendments set out in Appendix A (revised Sections 1, 2, 3, 4, 5, 8, 9, 10 and 11) shall take effect on January 1, 2015 and shall apply prospectively. The amendments set out in Appendix B (revised Sections 6 and 7) shall take effect on January 1, 2016. The amendments set out in Appendix C (the related amendments to Rule 8, RPC 7.4, Comment [3] to that RPC, and Rule 31, Section 18(a)(3)) shall take effect on January 1, 2015 and shall apply prospectively. All matters pertaining to compliance with Rule 21 on or before the foregoing effective dates shall continue to be governed by the version of Rule 21 in effect during the pertinent compliance year."

Law Reviews. Bridging the Gap: A Professional Practice Skills Program for New Lawyers (Douglas A. Blaze, B. Riney Green and Pamela L. Reeves), 35 No. 4 Tenn. B.J. 13 (1999).

Certification Proposal Streamlined by Dropping Required CLE Disclosure in Advertising: Will Tennessee Have Certification by 1993? (Lawrence R. Ahern III), 28 No. 5 Tenn. B.J. 24 (1992).

Lawyers Can Now Specialize, 30 No. 4 Tenn. B.J. 6 (1994).

"The Status of CLE" (David N. Shearon), 24 No. 3 Tenn. B.J. 32 (1988).

Attorney General Opinions. Legal liability and representation of commission and its members, OAG 88-153 (8/24/88).

Amendment to Supreme Court Rule 21 — State and federal antitrust laws, OAG 99-155
 Transitional continuing education program — (8/19/99).

Rule 22. Appointment of Magistrates in Child Support Cases. — Pursuant to the provisions of Tenn. Code Ann. § 36-5-402(b)(4), the terms and conditions of the appointment of magistrates in child support cases, as magistrates are defined in Tenn. Code Ann. § 36-5-401(2), shall be prescribed by rule of the Supreme Court.

When the appointment of a magistrate is required and authorized by the Court, the director of the Administrative Office of the Courts shall so notify the presiding judge of the judicial district (or in counties having a metropolitan form of government, the director shall notify the trial court judge who hears more than 50% of the child support and domestic relations cases in such judicial district) and the appointment shall be made by the presiding judge in conformity with Tenn. Code Ann. § 36-5-402. The appointment of magistrates in juvenile court shall not be governed by this provision but shall be governed by the provisions of Chapter 1 of Title 37.

The director of the Administrative Office of the Courts, with the approval of the Chief Justice, shall determine the terms and conditions of the appointment of the magistrate for the purpose of hearing child support cases. Such terms and conditions of magistrate appointment, pursuant to Tenn. Code Ann. § 36-5-402(b)(4), shall include, but not be limited to, the rate of compensation to be paid, reimbursement of expenses, and whether the position shall be full time or part time. [Adopted December 21, 1987 and amended by order entered February 17, 2000; amended by order filed and effective November 28, 2018.]

Compiler's Notes. Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

In its order filed November 28, 2018, the Supreme Court provided that: "On October 18, 2018, the Court filed an Order soliciting public comments on proposed amendments to Rule 22

of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was November 16, 2018. The Court did not receive any written comments during the comment period. After due consideration, the Court hereby adopts the amendments to Rule 22 of the Rules of the Tennessee Supreme Court as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Rule 23. Certification of Questions of State Law from Federal Court.

Sec. 1. When Certified. The Supreme Court may, at its discretion, answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a District Court of the United States in Tennessee, or a United States Bankruptcy Court in Tennessee. This rule may be invoked when the certifying court determines that, in a proceeding before it, there are questions of law of this state which will be determinative of the cause and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of Tennessee.

NOTES TO DECISIONS**1. Applicability.**

Criteria of Tenn. Sup. Ct. R. 23, § 1, were satisfied because whether promissory estoppel was an exception to the statute of frauds and, if so, the quantum of proof required to establish such a claim were determinative of plaintiff's claim for promissory estoppel. Additionally, the

Tennessee Supreme Court had never addressed the issues presented, and the Tennessee Court of Appeals has issued conflicting decisions. *Carbon Processing & Reclamation, LLC v. Valero Mktg. & Supply Co.*, 823 F. Supp. 2d 786, 2011 U.S. Dist. LEXIS 120024 (W.D. Tenn. Oct. 17, 2011).

Sec. 2. Method of Invoking Rule. This rule may be invoked upon the issuance of a certification order by any of the courts referred to in Section 1 of this rule.

Sec. 3. Contents of Certification Order. The certification order shall contain:

- (A) The style of the case;
- (B) A statement of facts showing the nature of the case, the circumstances out of which the question of law arises, the question of law to be answered, and any other information the certifying court deems relevant to the question of law to be answered;
- (C) The names of each of the parties;
- (D) The names, addresses, and telephone numbers of counsel for each party; and
- (E) A designation of one of the parties as the moving party.

Sec. 4. Preparation of Certification Order; Notice of Filing. The certification order shall be prepared by the certifying court and signed by any judge or justice presiding over the cause. The clerk of the certifying court shall serve copies of the certification order upon all parties or their counsel of record and file with the clerk of this Court in Nashville the certification order, under seal of the certifying court, along with proof of service.

Sec. 5. Record. This court may require the original or copies of all or any portion of the record before the certifying court.

NOTES TO DECISIONS**1. Record.**

While attachments to appellate briefs were generally not considered part of the record, when the insurance policy in question was attached to the homeowners' brief in toto, the policy was clearly part of the record of the trial court and would have been in the record before

the appellate court had the court required the record. Therefore, the court considered the policy as a whole for purposes of its analysis. *Lammert v. Auto-Owners (Mut.) Ins. Co.*, 572 S.W.3d 170, 2019 Tenn. LEXIS 169 (Tenn. Apr. 15, 2019).

Sec. 6. Parties. The party designated by the certifying court as the moving party shall be referred to as the petitioner and the party adverse to the petitioner shall be referred to as the respondent.

Sec. 7. Briefs and Arguments.

(A) The brief of the party designated by the certifying court as the moving party shall be filed and served within twenty days of the filing with the Supreme Court of the certification order. The brief of the adverse party shall be filed within twenty days thereafter, and a reply brief may be filed within ten days thereafter.

(B) Oral arguments will not be permitted unless ordered by the Court, on its own motion or upon application of a party.

Sec. 8. Opinion. The written opinion of the Supreme Court stating the law governing the questions certified shall be sent by the clerk under the seal of this Court to the certifying court and to the parties or their counsel.

Sec. 9. Dismissal of Certification. If the Court, in the exercise of its discretion[,], declines to answer any or all of the questions of law certified to it, an order of the Court shall be sent to the certifying court and to all parties or their counsel.

Sec. 10. Costs. Costs incident to the proceedings in the Supreme Court of Tennessee shall be taxed in accordance with the Tennessee Rules of Appellate Procedure. [Adopted February 17, 1989, as amended by order entered July 25, 1994, and by order entered December 8, 1994.]

Law Reviews. Products Liability and Workers' Compensation — Malkiewicz v. R.R. Donnelley & Sons Co.: Shielding the Guarantor

under the Tennessee Workers' Compensation Law, 22 Mem. St. U.L. Rev. 611 (1992).

NOTES TO DECISIONS**ANALYSIS**

1. Certification Proper.
2. Power of the Supreme Court.

1. Certification Proper.

Because the interpretation of the bankruptcy statute arguably would affect the exemption rights of all citizens who permanently reside in Tennessee and receive alimony, the courts of Tennessee should first be given the opportunity to interpret the section, and, pursuant to Tenn. Sup. Ct. R. 23, the bankruptcy court will certify the question to the supreme court of Tennessee. *Bradford Furniture Co. v. Storey* (In re Storey), 172 B.R. 872, 1994 Bankr. LEXIS 1534 (Bankr. M.D. Tenn. 1994).

2. Power of the Supreme Court.

Tennessee supreme court's power to answer certified questions was grounded in Tenn. Const. art. VI, § 1, and as an exercise of that power, it was within the realm of the court's authority to answer questions certified to it by the federal courts; the Tennessee supreme court could answer certified questions pursuant to Tenn. Sup. Ct. R. 23 consistent with the inherent power of the court and with the responsibility to protect the sovereignty of the state. *Haley v. Univ. of Tennessee-Knoxville*, 188 S.W.3d 518, 2006 Tenn. LEXIS 192 (Tenn. 2006).

Rule 24. Rules of Procedure Governing Petitions for Waiver of Parental Consent for Abortions by Minors. — Pursuant to Tenn. Code Ann. § 37-10-304(i), this rule is promulgated to ensure that proceedings governing petitions for waiver of parental consent for abortions by minors are conducted in an expeditious and anonymous manner.

(1) Definitions. (a) "Act" means Acts 1988, ch. 929, as amended by Acts 1989, ch. 412, and Acts 1995, ch. 458.

(b) "Applicant" means a pregnant female less than eighteen years of age and

not emancipated, or a person acting as next friend on such female's behalf.

(c) "Petition" includes a motion or application.

(d) "Court" means the Juvenile Court, the Circuit Court, or the Supreme Court.

(2) Confidentiality. (a) The proceedings governed by this rule shall be confidential, and every effort should be made to ensure that the anonymity of the applicant is protected.

(b) The record shall be sealed. The record includes, without limitation, the petition, pleadings, submissions, transcripts, exhibits, orders, evidence, findings, and conclusions and any other written material to be maintained.

(c) Except as provided in Section 5(c) of this rule, the identity of the applicant shall not be disclosed at any stage of the proceeding. In all documents and proceedings, the applicant shall be identified or referred to only by the initials of her first and last name.

(d) The clerks of the various courts shall undertake to ensure that the applicant's contact with the clerk's office is confidential and expeditious to the fullest extent practicable.

(3) Precedence of the Proceeding. Proceedings under this rule shall be given such precedence over other pending matters to enable the court to render a decision within the time requirements established below.

(4) Commencement of the Proceeding. The proceeding shall be commenced by filing a petition in the Juvenile Court of any county of this state.

(5) Content of Petition and Assistance in Preparation. (a) The petition shall contain the following:

(i) The initials of the applicant;

(ii) The age of the applicant;

(iii) A statement that the applicant has been fully informed of the risks and consequences of the abortion;

(iv) A statement whether the applicant is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(v) a prayer for relief asking the court to enter an order authorizing a physician to perform an abortion upon the applicant without first obtaining parental consent;

(vi) An unsworn verification stating that the information therein is true and correct and that the applicant is aware that any false statements made in the application are a violation of Tenn. Code Ann. § 39-16-702; and

(vii) The signature of the applicant, which shall consist only of the applicant's initials.

(b) An applicant proceeding under this rule has the right to court-appointed counsel. Upon request, the court shall immediately appoint counsel to assist the applicant in the proceeding.

(c) One copy of the petition shall contain the complete true name of the minor applicant, shall be filed with the court, and shall be kept in a separate file under seal. This file shall not be open to inspection by anyone, except as provided in Tenn. Code Ann. § 37-10-304(h).

(6) Form of Petition. The form of the petition shall be prepared and filed in substantial conformity with the form set forth in the appendix to this rule. Provided, that the court should not decline to decide a case brought under

Tenn. Code Ann. § 37-10-304 and this rule because of any pleading omissions or other technical defects, but should favor the disposition of the case on the merits by liberally construing the pleadings.

(7) Filing Fees. No filing fees or court costs shall be required of the applicant.

(8) Dockets and Document Maintenance. (a) Each court shall maintain a separate sealed docket of proceedings under this rule that shall not be open to public inspection. The name or initials of the applicant shall not appear on any docket that is subject to public inspection.

(b) The proceeding shall be identified in any docket open to public inspection by case number only.

(c) Documents pertaining to the proceeding shall not be entered on court minutes. They shall be maintained in a closed file which shall be conspicuously marked "SEALED MATERIALS — CONFIDENTIAL" and identified by the case number only.

(9) Record of the Proceedings. Proceedings in the juvenile court and the circuit court shall be recorded by a court reporter, who shall maintain the anonymity of the petitioner and the confidentiality of the proceedings and the record. The expenses of reporting and transcribing the proceeding shall be paid by the state.

(10) Entry and Effects of Judgments. A judgment or decision by the juvenile court, the circuit court, or the Supreme Court granting or denying the petition is effective immediately upon the filing thereof. The clerk of the court in which the petition is pending shall notify the applicant by delivering to her counsel a certified copy of the order. Upon entry by any court of an order granting the petition, counsel for the petitioner shall deliver a certified copy of the order to the person who will perform or induce the abortion. The order shall become a part of the applicant's medical records. There shall be no appeal from a judgment granting the petition.

(11) Proceedings in the Juvenile Court. (a) The case shall be heard by a juvenile court judge and not by a juvenile court referee. If a juvenile court judge is unavailable to hear the case within the time requirements established below, the case shall be immediately transferred to the Circuit Court for disposition.

(b) Upon filing of the petition, the case shall be immediately docketed for a hearing to be held as soon as the parties can be assembled, but in no event later than the next business day following the filing of the petition. The parties to the hearing should be limited to: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter.

(c) The hearing shall be closed to all other persons. Witnesses shall be admitted only for the duration of their testimony. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within forty-eight (48) hours of the time of filing of the petition, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing, and must include

specific findings of fact and conclusions of law. Failure to render a decision within forty-eight (48) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal. In the event the court does not rule at the conclusion of the hearing, the court reporter shall prepare a transcript of the hearing immediately.

(e) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(f) If the petition is denied or a decision is not reached within forty-eight (48) hours, an appeal may be had by filing a Notice of Appeal with the Juvenile Court Clerk. Upon receipt of the Notice of Appeal, the Juvenile Court Clerk shall immediately hand deliver the notice of appeal and the record to the Circuit Court Clerk. The transcript of the hearing in juvenile court shall be delivered to the Circuit Court Clerk by the court reporter not later than two (2) hours prior to the time set for the hearing in circuit court.

(12) Proceedings in the Circuit Court. (a) Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately docket the case.

(b) A hearing shall be held within seventy-two (72) hours of the filing of the Notice of Appeal, weekends and holidays included.

(c) The hearing shall be closed to all persons other than the following: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court may hear the case *de novo* on the record, or require the witnesses, or some of them, to testify in person. The court may also hear additional witnesses in its discretion.

(e) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within seventy-two (72) hours of the time of filing of the notice of Appeal, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing and must include specific findings of fact and conclusions of law. Failure to render a decision within seventy-two (72) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal.

(f) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(g) The applicant may appeal the decision of the Circuit Court denying the petition directly to the Supreme Court by filing a Notice of Appeal with the Circuit Court Clerk. Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately transmit the Notice to the Supreme Court Clerk by facsimile. The Circuit Court Clerk shall thereafter contact the Supreme Court Clerk telephonically to confirm that the facsimile was received.

(h) Immediately upon receipt of the Notice of Appeal, the Circuit Court Clerk shall notify the court reporter who shall prepare a transcript of the hearing in the circuit court and file it with the Circuit Court Clerk within forty-eight (48)

hours of the filing of the notice of appeal. The Circuit Court Clerk shall prepare the record in accordance with Tenn. R. App. P. 24 and 25, except that the record must be completely assembled by the clerk, authenticated by the Circuit Court judge, and transmitted to the Supreme Court within five (5) business days of the filing of the Notice of Appeal. The record on appeal shall consist of the following:

- (i) The petition;
- (ii) The findings of fact, conclusions of law, and final order of the circuit court;
- (iii) Any other order relevant to the appeal and the papers upon which that other order is based;
- (iv) Exhibits material to the appeal;
- (v) Any other paper or exhibit filed in the trial court that the applicant requests be included in the record;
- (vi) The notice of appeal;
- (vii) The transcripts of the hearings in the juvenile court and the Circuit Court; and
- (viii) The certificate of the clerk.

(13) Proceedings in the Supreme Court. (a) Upon receipt of the Notice of Appeal, the Supreme Court Clerk shall immediately notify the Chief Justice or his/her designee of the filing.

(b) Filing of a brief. The applicant shall file in the Supreme Court a brief within two (2) calendar days after the record is filed with the Court. The brief shall include copies of the orders and opinions of the lower courts, and may include those parts of the record necessary for determination of the appeal. *See* Tenn. R. Civ. P. 10.03.

(c) Unless oral argument is waived, the Supreme Court shall conduct a hearing within two (2) calendar days after the brief and record are filed in the Supreme Court. When necessary because of the exigencies of the situation, oral argument may be conducted by telephone, at the Court's discretion.

(d) Oral argument shall be deemed waived unless requested. *See* Tenn. R. App. P. 35.

(e) The Supreme court shall hear the case *de novo* upon the record.

(f) If possible, the Supreme Court will render a decision at the conclusion of the argument, if held. In any event, the Court will render a decision no later than forty-eight (48) hours after hearing argument, or after the record and brief are filed, whichever is later, weekends and holidays included.

(g) If the decision is not rendered immediately following argument, then the petitioner shall be responsible for contacting the Supreme Court Clerk for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(h) Upon application and for good cause shown, the Supreme Court may order the time periods in this rule reduced in order to ensure an expedited review. The requirement of good cause will be satisfied if the applicant shows that the requested relief may become unavailable and the issue will become moot by the passage of time unless the time periods are reduced. [Adopted by order entered June 22, 1989, effective July 1, 1989; as amended by order filed April 22, 1997; and by order filed February 11, 2000.]

Advisory Commission Comments [1989].

This new rule is in response to the Tennessee legislature's request that the Supreme Court promulgate rules to "ensure that proceedings under ... [the waiver of parental consent to abortion statute, Tenn. Code Ann. §§ 37-10-301 — 307] are handled in an expeditious and anonymous manner...." T.C.A. § 37-10-304(i). Underlying this rule is the fact that a decision on a request to waive parental permission for an abortion must be decided quickly or the issue becomes moot simply because of the passage of time.

The proposed Rule 24 assumes that the process involves three courts: The juvenile court, circuit court, and Supreme Court. The initial petition for waiver of parental consent is filed in the juvenile court, Tenn. Code Ann. § 37-10-303(c), which must rule within forty-eight hours of the application unless the time is extended by the minor. Tenn. Code Ann. § 37-10-304(d). A minor whose petition is denied by the juvenile court may take a de novo appeal to the circuit court. Tenn. Code Ann. § 37-10-304(g). Strict time limitations apply. Notice of appeal is filed within twenty-four hours of the juvenile court's decision. The juvenile court record must be received in the circuit court and the appeal docketed within five days of the filing of the notice of appeal. The appeal is to be heard and a decision rendered by the circuit court within five days of the day the case was docketed in the circuit court. Thus, the circuit court should render a decision no more than eleven days after the decision in the juvenile court.

The proposed Rule 24 adopts the dual principles of an expedited appeal with strict time limitations. Subsection (1) requires the minor appealing from a decision of the circuit court to file a notice of appeal with both the circuit court and the Supreme Court within forty-eight hours after the decision of the circuit court. Of course notice could be filed more quickly. Notice to both courts is designed to advise the circuit court clerk that a record will have to be prepared and should assist the Supreme Court in docketing the case.

Subsection (2) requires the minor's representative to prepare and file the record in the circuit court within three calendar days of the adverse decision. The circuit court clerk must transmit the record to the Supreme Court in three calendar days.

Subsection (3) requires the minor's representative to file a brief in the Supreme Court within three calendar days after the record is filed in the circuit court.

The Supreme Court is to conduct a hearing, unless waived, within three days after the brief and record are filed, subsection (4), and shall render its decision within three days after the hearings, subsection (6).

Upon application the Supreme Court may order the statutory time periods shortened in any given case. These procedures should enable the minor to have a full and fair opportunity to resolve the issue of whether a court should grant a waiver of parental consent to an abortion.

NOTES TO DECISIONS

ANALYSIS

- 1. Grounds.
- 2. Maturity.
- 3. Physician Consultation.
- 4. Venue.
- 5. Appeal.
- 6. Petition Contents.
- 7. Injunction Invalid.

1. Grounds.

A third party, including a media entity, should be allowed to intervene to seek modification of protective orders to obtain access to judicial proceedings or records, since in all such cases, the third party can demonstrate that its claims have a question of law or fact in common with the main action. *Ballard v. Herzke*, 924 S.W.2d 652, 1996 Tenn. LEXIS 378 (Tenn. 1996).

2. Maturity.

The requirement that a minor seeking to judicially bypass the consent requirement state "whether the applicant is of sound mind and has sufficient intellectual capacity to consent to

the abortion" is not unconstitutional since it does not foreclose the applicant from seeking an abortion if the applicant does not have that capacity. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

3. Physician Consultation.

Pre-petition physician consultation is not unduly burdensome as the minor is allowed to consult with a physician at any time and in any manner. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

The inclusion of a pre-petition physician consultation in the model petition appended to Tenn. Sup. Ct. R. 24 does not amount to an undue burden, especially since it is aimed at informing the woman's free choice, not hindering it. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn.

1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

4. Venue.

The venue provision found in T.C.A. § 37-10-303(b), which permits the minor seeking judicial bypass to petition the juvenile court of any Tennessee county, prevails over Tenn. Sup. Ct. R. 24's more limited venue provision. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

5. Appeal.

The twenty-four hour appeal provision does not place an undue burden upon a minor's ability to pursue a judicial bypass since: (1) T.R.A.P. 4(d) allows civil litigants to file notices of appeal in advance and Tennessee's notice of appeal form does not exclude advance authorization of an appeal; (2) If the minor does not arrange for an appeal in advance, the window of time within which the minor must remain in contact with the court is only forty-eight hours; and (3) The juvenile court is required to advise the minor of the right to court-appointed counsel, assuring a minor access to assistance in navigating the appeals process. *Memphis*

Planned Parenthood, Inc. v. Sundquist, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

6. Petition Contents.

Tenn. Sup. Ct. R. 24's requirement that a minor state in her petition "whether [she] is of sound mind and has sufficient intellectual capacity" does not foreclose her from seeking an abortion if she does not have that capacity. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

7. Injunction Invalid.

The district court abused its discretion in enjoining the state from implementing the Parental Consent for Abortions by Minors Act, T.C.A. § 37-10-301 et seq., and Tenn. Sup. Ct. R. 24 rather than severing the provisions it found offensive and leaving the remainder intact. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 1999 FED App. 162P, 1999 U.S. App. LEXIS 8481 (6th Cir. Tenn. 1999), rehearing denied, 184 F.3d 600, 1999 U.S. App. LEXIS 18895 (6th Cir. 1999).

IN THE _____ COURT OF _____ COUNTY, TENNESSEE
AT _____
IN RE: (Initials of Applicant))
A minor) No. _____

PETITION FOR JUDICIAL AUTHORIZATION OF AN ABORTION
WITHOUT PARENTAL CONSENT

Comes now the applicant, _____, a minor, who respectfully states:

1. Applicant is a pregnant female.
2. Applicant's date of birth is _____.
3. Applicant is approximately _____ weeks pregnant.
4. The applicant desires to terminate her pregnancy and has consulted with the physician who is to perform the abortion, or with a referring physician, for that purpose the _____ day of _____, 20_____. The applicant has been fully informed of the risks and consequences of the abortion.
5. Applicant consents to the abortion procedure.
6. Applicant is of sound mind and has sufficient intellectual capacity to consent to an abortion.
7. Applicant is mature and capable of giving informed consent to the proposed abortion. **AND/OR** The performance of an abortion upon the applicant would be in the applicant's best interests.

WHEREFORE, applicant prays this Honorable Court to enter an Order authorizing a physician to perform an abortion upon applicant without first obtaining parental consent.

Respectfully submitted,

(Applicant's initials)

(Signature of Counsel)

VERIFICATION

I verify that the statements made in this petition are true and correct to the best of my personal knowledge or information and belief. I understand that any false statements made herein are subject to the penalties of Tenn. Code Ann. § 39-16-702 relating to perjury.

(Applicant's initials)

(Date)

Rule 25. Tennessee Lawyers' Fund for Client Protection.

Sec. 1. Tennessee Lawyers' Fund for Client Protection.

- 1.01.** There is hereby established the Tennessee Lawyers' Fund for Client Protection to reimburse claimants for losses caused by any dishonest conduct committed by lawyers practicing in this state.
- 1.02.** The purpose of the Tennessee Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity

of the legal profession as a whole by reimbursing losses caused by the rare instances of dishonest conduct of lawyers practicing in this state.

1.03. As used in these rules, “dishonest conduct” means the misappropriation or willful misapplication of a person’s money, securities or other property.

1.04. This rule shall apply to dishonest conduct that arose out of the practice of law in Tennessee.

1.05. For purposes of this Rule, “lawyer” shall include a person:

(a) licensed to practice law in this jurisdiction;

(b) admitted as in-house counsel;

(c) admitted *pro hac vice*;

(d) practicing in Tennessee under the authority of Tennessee Supreme Court Rule 8, RPC 5.5(d)(1);

(e) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or

(f) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

[As amended by order filed August 30, 2013, effective October 1, 2013.]

Sec. 2. Funding.

2.01. The Fund shall consist of monies or other properties obtained by the following:

(a) Annual payments from lawyers in an amount set by the Court in Rule 9, Section 10.2(c) collected annually with the yearly registration fees by the Board of Professional Responsibility of the Supreme Court of Tennessee; lawyers exempted under Rule 9, Section 10.3 are also exempted from this rule; lawyers who became life members of the Fund on or before December 7, 1993, shall also be exempted from this rule

(b) Recoveries by subrogation or from lawyers or former lawyers or their estates reimbursed to the Fund for payments made by the Fund;

(c) Gifts or bequests from any source; and

(d) Earnings on investments of the Fund. [As amended by order entered December 7, 1993; and by order filed August 30, 2013, effective October 1, 2013; and by order filed August 18, 2014, effective upon filing.]

Sec. 3. Funds.

3.01. All monies or other assets allocated to the Fund shall be held in a separate account in the name of the Fund, subject to written direction of the Board of the Tennessee Lawyers’ Fund for Client Protection (the “Board”). [Amended by order filed and effective October 15, 2018.]

Compiler’s Notes. In its order filed October 15, 2018, the Supreme Court provided: “On May 8, 2018, the Tennessee Lawyers’ Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association (“KBA”), the Chattanooga Bar Association

(“CBA”), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

“After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately.”

Sec. 4. Composition of Board.

4.01. The Board shall consist of six lawyers and three non-lawyers appointed for initial terms as follows:

(a) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(b) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(c) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(d) One non-lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(e) One non-lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(f) One non-lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(g) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(h) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(i) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a three year term.

4.02. Subsequent appointments shall be for a term of three years. Bar associations within the State of Tennessee may recommend individuals for appointment to the Board.

4.03. No appointee who has served two full terms of three years shall be eligible for reappointment to the Board until three years after the termination of the most recent term.

4.04. Vacancies shall be filled by appointment by the Supreme Court of Tennessee, whether said vacancies exist due to expiration of a member's term, resignation, removal, death, or disability. [Amended by order filed and effective October 15, 2018.]

Compiler's Notes. In its order filed October 15, 2018, the Supreme Court provided: "On May 8, 2018, the Tennessee Lawyers' Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association ("KBA"), the Chattanooga Bar Association

("CBA"), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

"After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately."

4.05. The Supreme Court of Tennessee shall select a chairperson, vice-chairperson, secretary-treasurer and such other officers as the Court deems appropriate.

4.06. The Board members shall be bonded in such manner and amount as the Supreme Court of Tennessee may determine.

4.07. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

Sec. 5. Board Meetings.

5.01. The Board shall meet as frequently as necessary to carry out its duties, but no less than once per year.

5.02. The Chairperson shall call a meeting at any reasonable time, or upon the request of at least three members of the Board.

5.03. A quorum for any meeting of the Board shall be five members. Unless otherwise permitted by this Rule, an affirmative vote of five members of the Board shall be necessary to authorize any action. If time restraints are such that a regular or special meeting of the Board is impractical, Disciplinary Counsel shall circulate to the members of the Board in writing the reasons for the recommendation of a particular action supported by a factual report. Board members may communicate their vote for or against the recommendation by telephone, facsimile, regular mail, or electronic means. Any member of the Board may request that Disciplinary Counsel convene a telephone conference of the Board, whereupon such conference must be convened with at least a quorum so conferring. [Amended by order filed September 19, 2019, effective upon filing.]

Compiler's Notes. Supreme Court order dated September 19, 2019 provided that: "On August 16, 2019, this Court entered an order soliciting comments with regard to proposed revisions to Tennessee Supreme Court Rule 25, Section 5.03, which would allow the Tennessee Lawyers' Fund for Client Protection Board to communicate their vote by telephone, facsimile, regular mail and electronic means."

"No comments having been received from the bench, the bar, or the public, and after due consideration, the Court hereby amends the relevant provisions of Tennessee Supreme Court Rule 25, Section 5.03, as set out in the attached Appendix to this Order. Section 5.03 and all other provisions shall be effective immediately upon the filing of this Order."

5.04. Minutes of meetings shall be taken and permanently maintained by the Board.

5.05. Meetings by telephone conference are permitted.

5.06. When the Board is hearing a claim, approval of a claim shall require the affirmative vote of a majority of members present. See Section 10.08 for the procedures for hearing claims.

Sec. 6. Duties and Responsibilities of the Board.

6.01. The Board shall have the following duties and responsibilities:

- (a) To receive, evaluate, determine and pay approved claims;
- (b) To promulgate rules of procedure not inconsistent with these Rules and subject to prior approval by the Supreme Court of Tennessee;
- (c) To provide a full report at least annually to the Supreme Court of Tennessee and make other reports and publicize the activities to the public and the Bar;
- (d) The staff and physical resources of the Board of Professional Responsibility will assist in the Board's performance of its functions effectively and without delay; the Board will compensate the staff for its services;
- (e) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary; this authority to contract for professional services as needed by the Board shall not be construed to authorize the Board to hire employees of the Board;
- (f) To prosecute claims for restitution to which the Fund is entitled;

- (g) To submit an annual budget for approval by the Supreme Court of Tennessee;
- (h) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund. [As amended by order filed December 18, 2007, effective January 1, 2008; by order filed August 30, 2013, effective October 1, 2013; and by order filed and effective October 15, 2018.]

Compiler’s Notes. In its order filed October 15, 2018, the Supreme Court provided: “On May 8, 2018, the Tennessee Lawyers’ Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association (“KBA”), the Chattanooga Bar Association

(“CBA”), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.
“After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately.”

- Sec. 7. Conflict of Interest.**
- 7.01.** A member of the Board who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.
- 7.02.** A member of the Board with a past or present relationship, other than as provided in Section 7.01 of this rule, with a claimant or the lawyer whose alleged conduct is the subject of the claim shall disclose such relationship to the Board and, if the Board deems appropriate, that member shall not participate in any proceeding relating to such claim.

- Sec. 8. Immunity.**
- 8.01.** The members, employees and agents of the Board are absolutely immune from civil liability for all acts in the course of and within the scope of their official duties.

- Sec. 9. Procedures and Responsibilities for Claimants.**
- 9.01.** The Board shall prepare and approve a form of claim.
- 9.02.** The form shall include at least the following information provided by the claimant under penalty of perjury:
- (a) Name and address of claimant, home and business telephone, occupation and employer;
 - (b) Name, address and telephone number of the lawyer alleged to have engaged in dishonest conduct;
 - (c) The nature of services the lawyer performed and/or was to perform for the claimant, if any;
 - (d) Whether the claimant’s agreement with the lawyer was in writing, and, if so, attach a copy;
 - (e) Specify whether the claimant’s loss involves money, securities or other property;
 - (f) The amount of loss and the date when the loss occurred, and if documentation is available, attach a copy;

(g) The date when the claimant discovered the loss, and how the claimant discovered the loss;

(h) A description of the lawyer's alleged dishonest conduct and the names and addresses of any persons who have knowledge regarding the loss;

(i) Whether the loss has been reported to the district attorney, police, disciplinary agency or other (specify); and if so, furnish a copy of the complaint and describe what action was taken;

(j) Whether the loss potentially can be reimbursed from any other source, such as insurance, fidelity or surety agreement and, if so, specify the source of such potential recovery;

(k) Description of any steps taken to recover the loss directly from the lawyer, or any other source;

(l) Any other facts believed to be important to the Fund's consideration of the claim;

(m) How the claimant learned about the Fund;

(n) The name, address and telephone number of the claimant's present lawyer, if any;

(o) A statement that the claimant agrees to cooperate with the Board in reference to the claim or civil actions which may be brought in the name of the Board or in the name of the claimant pursuant to a subrogation and assignment which shall be contained within the claim. [Amended by order filed and effective October 15, 2018.]

Compiler's Notes. In its order filed October 15, 2018, the Supreme Court provided: "On May 8, 2018, the Tennessee Lawyers' Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association ("KBA"), the Chattanooga Bar Associa-

tion ("CBA"), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

"After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately."

9.03. The claimant shall have the responsibility of completion of the claim form and establishing that a compensable claim may exist.

9.04. The claim shall be filed with the Board in the manner and place designated in its rules of procedure. [As amended by order filed August 30, 2013, effective October 1, 2013.]

Sec. 10. Processing Claims.

10.01. Immediately upon receipt by the Board, a copy of the claim shall be served upon the lawyer by certified mail or personal delivery directed to the address currently listed for such lawyer in the records of the Board of Professional Responsibility.

10.02. Whenever it appears that a claim is not compensable pursuant to these rules, the claimant shall be advised of the reasons why the claim is not compensable, and that unless additional facts to support eligibility are submitted to the Fund within 30 days, the claim shall be dismissed.

10.03. A certified copy of an order disciplining a lawyer for the same conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that the lawyer committed such conduct.

10.04. The Board of Professional Responsibility of the Supreme Court of Tennessee shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Board. Upon receipt of the report of investigation of the Board of Professional Responsibility, the Board shall evaluate whether the investigation is complete and determine whether the Board shall conduct additional investigation. The Board may withhold final action on any claim until disciplinary proceedings involving the same act or conduct have been concluded, or may proceed before disciplinary proceedings are concluded, in its discretion. [Amended by order filed and effective October 15, 2018.]

Compiler's Notes. In its order filed October 15, 2018, the Supreme Court provided: "On May 8, 2018, the Tennessee Lawyers' Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association ("KBA"), the Chattanooga Bar Associa-

tion ("CBA"), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

"After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately."

10.05. The Board may conduct its own investigation when it deems it appropriate.

10.06. The Board may request that testimony be presented to complete the record. Upon request, the claimant and lawyer, or either of their personal representatives, will be given an opportunity to be heard. Attendance of witnesses and production of evidence may be compelled by a subpoena.

10.07. When the record is complete the claim shall be determined on the basis of all available evidence. Determinations shall be made upon the basis of a preponderance of the evidence.

10.08. Hearings may be held in the Grand Division of the State where the claimant and/or the accused lawyer resides. The Chairperson may designate the Board to sit in panels of three Board members as assigned by the Chairperson. A concurrence of all three panel members sitting shall constitute a decision of the Board. If a claim is not unanimously approved by a panel of three, then the full Board shall be presented the record and approval of a claim shall require the affirmative vote of a majority of Board members present. Notice shall be given to the claimant and the lawyer of the Board's determination and the reasons therefore.

10.09. Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

Sec. 11. Judgments.

11.01. The Board may require that claimants seeking more than \$1,000 obtain a judgment against the offending lawyer or former lawyer. Claimants may be eligible for payment from the Fund if the judgment shall remain unpaid after reasonable efforts to collect same.

Sec. 12. Eligible Claims.

12.01. A claim must be filed within three years of the date that a loss occurred or reasonably should have been discovered, but in no event later than five years from the date of a loss. This provision applies prospectively to losses that occur after the date of its adoption.

12.02. Except as provided by Section 12.03 of this rule, the following losses shall not be reimbursable:

(a) Losses suffered by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(b) Losses covered by any bond, surety agreement, insurance contract to the extent covered thereby; including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(c) Losses of any financial institution which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract;

(d) Loss of any business entity controlled by the lawyer or any person or entity described in Section 12.02, (a), (b) or (c) hereof;

(e) Losses of a governmental entity or agency.

12.03. In cases of special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under this rule.

12.04. Paragraph 12.03 above notwithstanding, no payment from the Fund shall include interest, costs or attorneys’ fees accrued as a result or consequence of prosecuting the claim before the Board, except as may be allowed pursuant to Section 18.01 herein. [As amended by order filed August 30, 2013, effective October 1, 2013.]

Sec. 13. Limitations on Amount of Reimbursements.

13.01. No payment shall exceed the sum of \$100,000 for loss sustained by anyone claimant nor the aggregate sum of \$250,000 with respect to losses caused by anyone lawyer or former lawyer, unless otherwise determined by the Board and approved by the Court. No payment shall exceed \$250,000 per transaction regardless of the number of persons aggrieved or the amount of loss in such transaction unless otherwise determined by the Board and approved by the Court. No payment shall exceed ten percent of the assets of the Fund at the time it is made, exclusive of funds received for Life Memberships. Where joint liability of wrongdoers exists, the Board has discretion to allocate payments as it deems appropriate within these limits. Payments may be in lump sum or installments as the Board may determine. [As amended by order entered December 19, 1994; by order nunc pro tunc entered December 12, 2000 and filed April 23, 2001; amended by order filed and effective April 10, 2007; and by order filed and effective October 15, 2018.]

Compiler's Notes. In its order filed October 15, 2018, the Supreme Court provided: "On May 8, 2018, the Tennessee Lawyers' Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association ("KBA"), the Chattanooga Bar Associa-

tion ("CBA"), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

"After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately."

Sec. 14. Considerations on Payment of Claims.

14.01. In determining whether to pay a claim and the amount to be paid, the Board may consider any matter which, in its discretion, it deems relevant, including but not limited to the following:

- (a) The conduct, including negligence, if any, of the claimant which contributed to the loss;
- (b) The hardship which the claimant suffered because of the loss;
- (c) The total amount of reimbursable losses of applicants on account of any one lawyer or former lawyer or association of lawyers;
- (d) The total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund; and
- (e) Other sources of funds available to compensate the claimant for the loss.

Sec. 15. Legal Rights to Payment from Fund.

15.01. No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

15.02. Decisions of the Board shall be final and not be subject to appeal or review by any court.

Sec. 16. Subrogation.

16.01. Payments on approval claims shall be made from the Fund only upon condition that the Board receives, in consideration for any payment from the Fund, a pro tanto assignment from the claimant of the claimant's right against the lawyer involved, or his or her personal representative, his or her estate or assigns or of the claimant's right against any third party or entity concerning the dishonestly caused loss for which the claimant is receiving reimbursement from the Fund, and to the extent of such payment, a lien shall be created in favor of the Fund which shall attach to any asset that may be payable to the claimant from, or on behalf of, the person or entity who caused the claimant's loss and which resulted in the claimant's award of reimbursement from the Fund.

16.02. If the reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement. The Board may bring such action as it deems advisable against the lawyer, the lawyer's estate and any other person or entity who may be liable for the loss.

16.03. Should the claimant bring any action for recovery or reimbursed losses directly against the lawyer, the lawyer's estate or any other person or entity who may be liable for the loss, the claimant shall notify the Board of

such action and send a copy of the complaint. Any voluntary payment from the lawyer or other recovery from any source shall also be reported to the Board.

16.04. The claimant shall cooperate in any effort the Board undertakes to achieve reimbursement for the Fund. [As amended by order filed August 30, 2013, effective October 1, 2013.]

Sec. 17. Confidentiality.

17.01. Applications, proceedings and reports involving applications for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below.

17.02. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, or if the lawyer's alleged conduct is the subject of a public disciplinary, civil or criminal proceeding, the requirement of confidentiality is waived.

17.03. Section 17.01 shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

17.04. Both the claimant and the lawyer shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination and the reasons for the determination.

17.05. The Board shall have discretion to seal such parts of a file that would be damaging to a claimant or to which the claimant has a statutory right of confidentiality.

Sec. 18. Compensation for Representing Claimants.

18.01. No lawyer shall charge or accept compensation for prosecuting a claim on behalf of a claimant (a) on a contingency basis or (b) in excess of a flat fee of \$300.00. The fee shall be earned at an hourly rate to be approved by the Board and not above that provided in Rule 13 section (2)(c) of the Tennessee Supreme Court Rules. Lawyers owe a duty to the public to assist individuals wronged by members of the profession and may count hours spent assisting a claimant in the prosecution of a claim as pro bono hours if conducted without receiving a fee. [Amended by order filed and effective October 15, 2018.]

Compiler's Notes. In its order filed October 15, 2018, the Supreme Court provided: "On May 8, 2018, the Tennessee Lawyers' Fund for Client Protection filed a Petition to Amend Rule 25 of the Rules of the Tennessee Supreme Court. By Order filed May 9, 2018, the Court solicited public comment regarding proposed amendments to Rule 25. The Court has received comments from the Knoxville Bar Association ("KBA"), the Chattanooga Bar Associa-

tion ("CBA"), and attorney Terry Cox. The Court has carefully considered the comments received and thanks the KBA, the CBA, and attorney Cox for the same.

"After due consideration, the Court hereby amends Rule 25 of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Amendments to this Rule shall be effective immediately."

18.02. This prohibition only pertains to proceedings before the Board and not to the seeking of civil judgments and other actions taken by lawyers on behalf of claimants.

Sec. 19. Payments to the Board.

19.01. Failure of any lawyer to pay the amounts required by Section 2.01(a) of this rule shall be grounds for the suspension of the license to practice.

19.02. The Board of Professional Responsibility shall deposit all funds collected on behalf of the Tennessee Lawyer’s Fund for Client Protection with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Tennessee Lawyer’s Fund for Client Protection. Withdrawals from those funds shall only be made by the Tennessee Lawyer’s Fund for Client Protection for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct. [Adopted November 16, 1989; and amended by order filed June 28, 2002, effective July 1, 2002.]

Rule 26. Official Electronic Recordings of Court Proceedings.

Section 1. Scope.

1.01. This rule applies to any court of record authorized by the Supreme Court of Tennessee to use electronic recording equipment to record court proceedings.

Section 2. Record of Trial Court Proceedings.

2.01. Use and Format of Electronic Recordings. The term “transcript” used in Rule 24, Tennessee Rules of Appellate Procedure, shall include an official electronic recording of court proceedings recorded and maintained in accordance with this rule. “Electronic recording” shall include recordings to videotape, CD-ROM, DVD, or similar electronic storage format.

2.02. Electronic Recordings — Official Record. In court proceedings where electronic recording equipment is available, the official record of court proceedings shall consist of two electronic recordings, recorded simultaneously, of the proceedings. Upon the filing of a notice of appeal, one of the two electronic recordings, or a court-certified copy of a portion thereof, of the court proceeding being appealed shall be filed and certified by the clerk as part of the record on appeal. The second electronic recording shall be retained by the clerk of the trial court.

2.03. Method of Identification.

(a) Official Recording. For identification purposes, the clerk shall designate on each of the two official electronic recordings:

(1) on the first line, the judicial district number, the name of the court, including the division in which the proceeding is being held, the sequential number of the recording (counting all recordings made in that court since the start of the current calendar year), either the letter “A” (for the recording being retained by the court) or the letter “B” (for the recording being filed as part of the record on appeal);

(2) on the second line, the caption and case file number of the proceeding recorded on the recording (for example: “Smith vs. Jones, No. 93-325”) or the nature of the proceedings before the court if those proceedings pertain to more than one case (for example: criminal motions involving more than one

defendant); and

(3) on the third line, the date on which the recording was recorded in the form: MM/DD/YY.

(b) Certified Copy of Partial Official Recording. If a court-certified copy of a portion of any recording is prepared for filing as a part of the record on appeal, the clerk shall designate on the partial recording:

(1) on the first line, the judicial district number, the name of the court, including the division in which the proceeding is being held, and the word “copy”;

(2) on the second line, the caption of the case being appealed, the case file number, and the number of the source recording from which the copy was made; and

(3) on the third line, the date on which the source recording was recorded.

2.04. Duplicate Copies of Electronic Recordings.

(a) Simultaneous Duplicate Copies. A party to any court proceeding may order, in advance, a simultaneously made duplicate of the electronic recording being made of the proceeding. The cost of a simultaneous duplicate recording shall be \$50.00 per disc (or other media format) and shall be payable to either the clerk of the court or the trial court administrator, as established by local rule, at the time the order is placed.

(b) Subsequent Duplicate Copies. A party to any court proceeding may order, subsequent to the time a proceeding was recorded, a duplicate copy of the electronic recording for use in preparing an appeal or in preparing for subsequent proceedings. Upon any order for a subsequent duplicate recording, the court shall arrange for the recording of the duplicate(s). The cost of a subsequently ordered duplicate recording shall be \$100.00 per disc (or other media format) and shall be payable to either the clerk of the court or the trial court administrator, as established by local rule, at the time the order is placed.

(c) Copies for Indigent Parties. In cases involving a party declared to be indigent by the court, the Administrative Office of the Courts, upon request by the trial court, will furnish the trial court with the blank electronic media needed for making any duplicate copy ordered by the indigent party, and no fee will be assessed by the trial court to the indigent party or to the Administrative Office of the Courts.

(d) Use of Duplication Fees. Revenue derived from the sale of duplicate copies of recordings shall first be applied to the costs incurred by the court in making the duplicate copies, and any remaining revenue may be used to fund the court's other technology related needs.

2.05. Exhibit List and Trial Log. The trial judge or the judge's designee shall keep a written exhibit list and a log listing the admission of each exhibit and the beginning and end of each witness's testimony by reference to the recording. The automatic logs of all recorded proceedings are to be maintained by the court clerk in an appropriate repository.

2.06. Depositions. In a court proceeding in which electronic recording equipment is being used to record the proceeding, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or the electronic recording of the deposition.

Section 3. Procedure on Filing Notice of Appeal.

3.01. Trial Proceedings. Upon the filing of a Notice of Appeal in any case in which the trial proceedings have been electronically recorded, the clerk of the court shall, within thirty days of the filing of the Notice of Appeal, file the electronic recording or recordings of the entire trial proceeding, unless otherwise agreed by the parties.

3.02. Pre-Trial and Post-Trial Proceedings. Within fifteen days after filing the Notice of Appeal, the appellant shall file a designation of any pre-trial or post-trial proceedings to be included in the trial record. The appellee shall have an additional fifteen days to file a designation of any additional proceedings to be included. If any proceeding listed in any designation so filed was not electronically recorded, such designation shall be clearly marked “WRITTEN TRANSCRIPT REQUIRED.”

3.03. Clerk’s Preparation of Record. Where the pre-trial or post-trial proceedings listed in any designation so filed were recorded, the clerk of the court shall, within thirty days from the date the designation is filed, file the electronic recording of the designated proceedings or a certified copy thereof. Once all electronic recordings and written transcripts making up the record on appeal have been assembled, each recording and, if applicable, transcript shall be given a volume number in chronological order of the proceedings recorded and transcribed. The clerk of court shall then proceed in accordance with Rule 25, Tennessee Rules of Appellate Procedure.

Section 4. Procedure on Appeal.

4.01. References to Electronic Recordings. The provisions of Rule 27, Tennessee Rules of Appellate Procedure, shall apply except that reference to a volume of the trial record which is an electronic recording shall be to volume number, month, day, year, hour, minute and second at which the reference begins as recorded on the recording. (For example: “Vol. 2, 10/27/92; 02:24:05p”.) If the recording covers only a single day, the month, day and year may be omitted.

NOTES TO DECISIONS

1. Waiver.

An appellant waived any issues which the appellant may have attempted to raise on appeal because the appellant failed to comply in any significant way with the requirements for

an appeal. The appellant’s brief on appeal failed to provide any citation to an electronic recording. In re Joshua E., — S.W.3d —, 2018 Tenn. App. LEXIS 351 (Tenn. Ct. App. June 22, 2018).

4.02. Optional Appendix to Briefs. Rule 28, Tennessee Rules of Appellate Procedure, allows the optional filing of an appendix to a party’s appellate brief. Thus, in any case in which the trial court proceeding was electronically recorded pursuant to this Rule 26, a party may include in an appendix a transcript of the evidence or any portion thereof. There shall appear, however, at the beginning of each segment of evidence so transcribed, and at intervals of not greater than ten minutes of court time, a cross-reference to the electronic recording which corresponds to that point of the transcription. (See the example set out in Section 4.01 for the format of such cross-references.)

4.03. Transcription for Appellate Court. The appellate court, in its discretion, may order the preparation of a transcript of all or any portion of the electronic recording. The transcript shall be prepared and filed with the clerk of the trial court within thirty days from the date it is ordered and shall be approved in accordance with Tenn. R. App. P. 24(f). Within fifteen days after approval, the clerk of the trial court shall prepare and transmit a supplemental record containing the transcript to the clerk of the appellate court. The appellate court, in its discretion, also may order the preparation of supplemental briefs containing references to the transcript pursuant to Tenn. R. App. P. 27(g). The costs of the transcript and the supplemental record shall be taxed by the appellate court in accordance with Tenn. R. App. P. 40.

Section 5. Establishment of Local Procedures.

5.01. The judges of a judicial district in which electronic recording equipment is used to record court proceedings may, by order, establish further procedures relating to the recording of court proceedings, provided that such procedures do not conflict with the provisions of this rule, with any other rule adopted by the Supreme Court of Tennessee, or with any statute, and further provided that such procedures are approved by the Supreme Court prior to implementation. [Adopted May 5, 1993; amended by order filed November 13, 2001; by order filed September 3, 2013, effective October 1, 2013.]

Rule 27. Judicial Performance and Evaluation Program. [Repealed.] [Repealed by order filed and effective May 11, 2015.]

Compiler's Notes. In its order [ADM2015-00859] filed May 11, 2015, the Supreme Court provided that: "Rule 27, Rules of the Tennessee Supreme Court, governed the Judicial Performance and Evaluation Program administered by the Judicial Performance Evaluation Commission ('Commission'). The Commission was created by former section 17-4-201(b), Tennessee Code Annotated, and the Court adopted Rule 27 pursuant to former section 17-4-201(a)(1). The Commission was terminated on

June 30, 2013, and the Commission's wind-up period expired on June 30, 2014. See Tenn. Code Ann. §§ 4-29-234(a)(37) and 4-29-112 (2011). Because the Commission has been terminated, the provisions of Rule 27 are obsolete, and the Court hereby repeals Rule 27 in its entirety (including the title of the rule). Rule 27 shall now be designated as '[Repealed]' in the published versions of the Rules of the Supreme Court. This amendment is effective upon the filing of this order."

Rule 28. Tennessee Rules of Post-Conviction Procedure.

Sec. 1. Scope and Authority of Rules

(A) **Purpose** — These rules supplement the remedies and procedures set forth in the Post-Conviction Procedure Act (hereinafter the "Act"), Tenn. Code Ann. § 40-30-101 et seq.

(B) **Authority** — These rules are adopted pursuant to Tenn. Code Ann. § 40-30-118 and the inherent authority of the Tennessee Supreme Court.

Sec. 2. Definitions

(A) **Petition for Post-Conviction Relief** — A petition for post-conviction relief is an application to the court, filed by or on behalf of a person convicted of and sentenced for the commission of a criminal offense, that seeks to have the conviction or sentence set aside or an appeal granted on the ground or

grounds that the conviction or the sentence or the denial of an appeal violated the state or federal constitution. A pro se petition is one filed by a petitioner without the benefit of counsel.

(B) **Answer** — An answer is a response filed by the state to the petition for post-conviction relief that admits or denies every claim in the petition and which raises affirmative and specific statutory defenses.

(C) **Motion to Reopen** — A motion to reopen is a request filed by or on behalf of a person whose original petition for post-conviction relief has been finally ruled upon, to reopen the post-conviction proceeding to consider a new claim of constitutional error pursuant to Tenn. Code Ann. § 40-30-117.

(D) **Waiver** — A ground for relief is waived if petitioner or petitioner's counsel failed to present the ground for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented. A rebuttable presumption of waiver arises if a ground for relief was not raised before a court of competent jurisdiction in which it could have been raised. Waiver does not occur if the claim for relief is based upon a constitutional right not recognized at the time of the prior proceeding and if either the state or federal constitution requires retroactive application of the right.

(E) **Previously Determined** — A claim for relief is previously determined if a court of competent jurisdiction has ruled on the merits of the claim after a full and fair hearing at which petitioner is afforded the opportunity to call witnesses and present evidence.

(F) **Post-Conviction Proceeding** — A post-conviction proceeding is a proceeding filed and adjudicated in accordance with these rules of post-conviction procedure.

(G) **Filing** — Papers required or permitted to be filed by the rules of post-conviction procedure, when filed by an attorney or a pro se petitioner who is not incarcerated, are filed when received by the clerk of court.

If papers required or permitted to be filed by these rules are prepared by or on behalf of a pro se petitioner incarcerated in a correctional facility and are not received by the clerk of the court until after the time fixed for filing, filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing. "Correctional facility" shall include a prison, jail, county workhouse or similar institution in which the pro se petitioner is incarcerated. This provision shall also apply to service of papers by pro se petitioners pursuant to these rules. Should timeliness of filing or service become an issue, the burden is on the pro se petitioner to establish compliance with this provision. [As amended by order filed November 2, 1999.]

(H) **Colorable Claim** — A colorable claim is a claim, in a petition for post-conviction relief, that, if taken as true, in the light most favorable to petitioner, would entitle petitioner to relief under the Post-Conviction Procedure Act.

NOTES TO DECISIONS

1. Colorable Claim.

Definition of "colorable claim" in Tenn. Sup. Ct. R. 28, § 2(H) applies to the term "colorable claim" in Tenn. R. Crim. P. 36.1. State v.

Wooden, 478 S.W.3d 585, 2015 Tenn. LEXIS 932 (Tenn. Dec. 2, 2015).

Post-conviction court erred in dismissing defendant's petition for relief because the court

had jurisdiction to consider the petition—defendant pleaded guilty in a general sessions court and filed his petition in a court of record in the same county—and that his petition stated a colorable claim of ineffective assistance of counsel—counsel failed to advise defendant

of the immigration consequences of the plea—and defendant maintained that he would not have accepted the guilty plea but for trial counsel's deficiencies. *Guerra-Rosales v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 360 (Tenn. Crim. App. May 21, 2020).

Sec. 3. Applicability of Other Rules

(A) **Rules Applicable** — The Tennessee Rules of Evidence apply in post-conviction proceedings except as otherwise provided by these rules.

(B) **Rules Not Applicable** — Neither the Tennessee Rules of Civil Procedure nor the Tennessee Rules of Criminal Procedure apply to post-conviction proceedings except as specifically provided by these rules.

Sec. 4. Commencement of Post-Conviction Proceeding

(A) **Manner of Commencing** — A post-conviction proceeding is commenced by filing a petition as defined in Section 2 in the court in which petitioner was convicted or sentenced, if the court was a court of record, or, if the conviction or sentence was not in a court of record, by filing a petition as defined in Section 2 in the court of record having criminal jurisdiction in which the conviction occurred or the sentence was imposed.

(B) **Time for Commencing** — A petition for post-conviction relief must be filed within the statute of limitations set forth in Tenn. Code Ann. § 40-30-102.

(C) **Filing the Petition** — A petition shall be filed in accordance with Section 2(G) of these rules.

(D) **Filing Fees** — No filing fee shall be a prerequisite for the filing of a petition for post-conviction relief.

(E) **Place of Filing** — A petition shall be filed in the court in which the conviction was obtained or in which the sentence was imposed. If the conviction was not obtained in a court of record, the petition shall be filed in a court of record having criminal jurisdiction in the county in which the conviction occurred or the sentence was imposed.

Sec. 5. Nature of Pleadings

(A) **Nature of Pleadings** — The pleading in a post-conviction case shall consist of a petition or a motion to reopen and a responsive motion or answer.

(B) **Number of Petitions** — Each petitioner shall be entitled to file only one petition for each conviction or sentence incurred.

(C) **Limitation of Petitions** — Each petition shall be limited to claims arising from the judgment or judgments entered in a single trial or proceeding. A petitioner who desires to obtain relief from judgments entered in more than one trial or proceeding must file separate petitions for each trial or proceeding.

(D) **Form of Petition or Motion to Reopen** — The petition for post-conviction relief shall be substantially in the form set forth in the appendix. Likewise, a motion to reopen a post-conviction proceeding shall be substantially in the form set forth in the appendix.

(E) **Contents of Petition** — The petition shall contain:

(1) the biographical and case identifying information contained in the form petition in the appendix;

(2) an affidavit of petitioner in the form set forth in the appendix;

(3) each and every error that petitioner asserts as a ground for relief, including a description of how petitioner was prejudiced by the error(s);

(4) specific facts supporting each claim for relief asserted by petitioner;

(5) specific facts explaining why each claim for relief was not previously presented in any earlier proceeding;

(6) the name or names of any attorney(s) who prepared or assisted in preparing the petition.

(F) Effect of Failure to Comply with Rule — A petition may be dismissed without a hearing if it:

(1) is not timely filed;

(2) is filed while another post-conviction petition or direct appeal regarding the same conviction is pending;

(3) does not contain specific factual allegations;

(4) does not state the reasons that the claim is not barred by the statute of limitations, waived, or previously determined; or

(5) does not entitle petitioner to relief even if taken as true.

(G) Contents of State's Response — The answer shall admit or deny each and every allegation set forth in the petition. The state shall file a motion to dismiss which includes the facts relied upon to support the motion to raise as a defense that:

(1) the petition is barred by the statute of limitations;

(2) the claim has been waived or previously determined;

(3) the petition is not filed in the court with jurisdictions;

(4) the petition asserts a claim for relief from judgments entered in separate trials or proceedings;

(5) a post-conviction petition or direct appeal regarding the same conviction is currently pending; or

(6) the facts alleged fail to show that petitioner is entitled to relief.

(H) Time for Filing Answer or Motion — The answer or motion to dismiss shall be filed no more than thirty (30) days after the filing of the amended petition or written notice that no amendment will be filed as required by Tenn. Code Ann. § 40-30-107(b)(2), except for good cause shown.

(I) Effect of Failure to Comply with Rule — The failure to timely file the answer or motion to dismiss within thirty (30) days of the amended petition or written notice that no amendment will be filed or the failure to detail the facts relating to the defenses enumerated in subsection (5)(G) shall not entitle petitioner to relief without proof, but may result in the imposition of sanctions in the exercise of the trial judge's discretion.

Sec. 6. Procedure After Petition Filed

(A) Clerk's Obligations — (1) Upon receiving a petition for post-conviction relief, the clerk shall file the original document and process it pursuant to Tenn. Code Ann. § 40-30-105.

(B) Court Obligations — (1) The presiding judge shall assign a judge to hear the case who may be the original hearing judge. Should the presiding judge fail to assign a judge, and no judge is designated by the Chief Justice, the judge who presided at the original trial shall hear the petition.

(2) Within thirty (30) days after a petition or amended petition is filed, the judge to whom the case is assigned shall review the petition and all documents related to the judgment and determine whether the petition states a colorable claim.

(3) In the event a colorable claim is stated, the judge shall enter a preliminary order which:

- (a) appoints counsel, if petitioner is indigent;
- (b) sets a deadline for the filing of an amended petition;
- (c) directs disclosure by the state of all that is required to be disclosed under Rule 16 of the Tennessee Rules of Criminal Procedure, to the extent relevant to the grounds alleged in the petition, and any other disclosure required by the state or federal constitution;
- (d) orders the state to respond and, if appropriate, to file with the clerk certain transcripts, exhibits, or records from the prior trial or hearing; and
- (e) makes other orders as are necessary to the efficient management of the case.

(4)(a) In the event the court concludes after the preliminary review that a colorable claim is not asserted by the petition, the court shall enter an order dismissing the petition or an order requiring that the petition be amended.

(b) No pro se petition shall be dismissed for failure to follow the prescribed form until the court has given petitioner a reasonable opportunity to amend the petition with the assistance of counsel.

(c) In the event the court concludes that dismissal is appropriate, the court shall enter an order specifying its findings of fact and conclusions of law in support of the determination that the petition does not state a colorable claim. The order shall state specifically the facts which support dismissal including whether the petition is barred by the statute of limitation, was filed in a court without jurisdiction, or whether the petition fails to specify the grounds for relief, the facts supporting those grounds, or fails to establish that the claim(s) have not been waived or previously determined.

(5) In the event the court finds that certain claim(s) are colorable and others are not, the court shall enter an order specifying which claims are dismissed and which claims must be responded to by the state. The order shall comply with the requirements of sections (6)(B)(2) and (3) above.

(6) After the state's response is filed, the court shall again review the petition, amended petition, answer or motion, and related documents to determine whether a colorable claim has been stated. If a colorable claim has not been stated, the court shall dismiss the petition by order setting forth the findings of fact and conclusions of law. If a colorable claim is stated, the court shall enter an order requiring the state to answer the allegations, if it has not done so, and setting an evidentiary hearing. The court's order shall be filed within thirty (30) days of the state's response.

(7) The court may issue such interlocutory orders, including stays of execution, as may be required.

(8) Upon motion, in capital cases involving indigent petitioners, the court may authorize expenditure of funds for experts, investigation, or similar services in accordance with Rule 13, § 2B(10) of the Rules of the Supreme Court of Tennessee. The court's order granting or denying the motion shall include specific findings of fact and conclusions of law and shall, upon request,

be filed under seal with the record.

(9) All orders issued by the court except orders of dismissal and final orders shall be served upon counsel for petitioner, or petitioner if pro se, and the district attorney general.

(10) Orders of dismissal shall be considered final orders for purposes of appeal. Orders of dismissal and all final orders shall be served upon counsel for petitioner, the district attorney general, the Attorney General and Reporter in Nashville, and any authority imposing restraint on petitioner. The clerk shall certify on each order the date of entry and the date and manner of service.

(C) **Petitioner's and State's Obligations** — (1) In the event the court dismisses the petition, petitioner may appeal as of right in accordance with the Tennessee Rules of Appellate Procedure. In the event the court requires petitioner or the state to take other steps to prepare the case for trial, petitioner and the state shall comply.

(2) Appointed or retained counsel shall be required to review the pro se petition, file an amended petition asserting other claims which petitioner arguably has or a written notice that no amended petition will be filed, interview relevant witnesses, including petitioner and prior counsel, and diligently investigate and present all reasonable claims.

(3) Appointed or retained counsel shall file the certificate of counsel set forth in the appendix within 30 days of either being retained or appointed to represent petitioner, except for good cause shown.

(4) If retained counsel has prepared or assisted in preparing the initial petition and intends to represent petitioner, counsel shall sign the initial petition and shall file the certificate of counsel set forth in the appendix.

(5) Appointed counsel who fails to comply with this section may be denied compensation for services rendered.

(6) The state shall file an answer or a motion to dismiss within thirty (30) days of the filing of the amended petition or of the written notice that no amended petition will be filed. The answer or motion to dismiss shall comply with the statute and with the requirements of Section 5(G).

(7) Upon receiving the court's preliminary order, the state shall provide to petitioner discovery of all those items deemed discoverable under Rule 16, Tennessee Rules of Criminal Procedure, if relevant to the issues raised in the post-conviction petition, and shall provide any other disclosure required by the state or federal constitution.

(8) Petitioner may withdraw a petition at any time prior to the evidentiary hearing, but the withdrawn petition does not toll the statute of limitations. [As amended by order filed October 15, 1998.]

NOTES TO DECISIONS

ANALYSIS

1. No Egregious Violation.
2. Effect of Rule Violation.

1. No Egregious Violation.

Record did not contain a certification by post-conviction counsel in compliance with the rule, but violations of the rule alone did not warrant

a second post-conviction hearing, and no egregious violation of the rule occurred; following the filing of petitioner's pro se petition, counsel filed three amended petitions, as well as a post-hearing argument and memorandum of law, counsel thoroughly investigated petitioner's claims, and petitioner received a full and fair hearing on his petition. *Brent v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 295

(Tenn. Crim. App. Apr. 24, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 333 (Tenn. July 23, 2020).

2. Effect of Rule Violation.

There could conceivably be a situation where counsel's egregious violation(s) of the rule might impermissibly violate the limited due process requirements for post-conviction pro-

ceedings so as to warrant a second post-conviction hearing; however, the court reaffirms that there is no legal authority for the proposition that a rule violation, in itself, justifies another bite at the post-conviction apple. *Brent v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 295 (Tenn. Crim. App. Apr. 24, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 333 (Tenn. July 23, 2020).

Sec. 7. Discovery & Production of Evidence

(A) **Discovery** — The state shall provide discovery in accordance with Section 6(C)(7).

(B) **Production of Documents** — The court may require any clerk of any Tennessee court to furnish copies of documents, orders, or records to petitioner or to file the documents in the clerk's office at the state's expense.

Sec. 8. Evidentiary Hearing

(A) **Timing** — Upon finding that the petition states a colorable claim and within thirty (30) days of the state's response, the court shall enter an order scheduling an evidentiary hearing.

(B) **Continuances** — The evidentiary hearing shall be conducted within four (4) months of the order scheduling the hearing. The hearing shall not be continued except by order of the court finding that unforeseeable circumstances render a continuance a manifest necessity. No continuance shall extend the hearing more than sixty (60) days beyond the original hearing date.

(C) **Witnesses** — (1) Petitioner

(a) Petitioner has the right to testify unless petitioner is incarcerated in a state that will not release petitioner to the custody of Tennessee for appearance at the evidentiary hearing.

(b) Petitioner shall testify at the evidentiary hearing if the petition raises substantial issues of facts, unless petitioner is incarcerated out of state.

(c) If petitioner is incarcerated out of state, petitioner shall be allowed to offer testimony by affidavit or deposition.

(d) Under no circumstances shall petitioner be required to testify regarding the facts of the conviction which the petition attacks unless necessary to establish the allegations of the petition or necessary to the state's attempt to rebut the allegations of the petition.

(2) Affidavit and Deposition Testimony —

If the judge allows affidavit or deposition testimony under the provisions of Tenn. Code Ann. § 40-30-110(a), the judge shall allow the other party sufficient time to file affidavits or depositions in response. If the state is allowed to file deposition testimony, the state shall provide to counsel for indigent petitioners or indigent petitioners if pro se a copy of the deposition at state expense.

(3) Subpoenas —

Each party shall have the right to subpoena witnesses for appearance at the evidentiary hearing.

(D) **Hearing Procedure** — (1) Petitioner shall be required to present petitioner's case and to establish the factual grounds alleged by clear and convincing evidence.

- (2) Each party shall have the right to examine all witnesses.
- (3) In the event that the petition alleges that petitioner was unconstitutionally deprived of an appeal and was also entitled to relief on other grounds, the court shall bifurcate the proceedings and determine first whether petitioner was denied an appeal, while holding the other claims in abeyance. Those claims shall be considered after the outcome of the delayed appeal if allowed, or after the appeal of the claim, if denied.
- (4) The hearing shall be limited to issues raised in the petition.
- (5) If evidence is objected to on the basis that it concerns issues not raised in the petition or answer, the court may allow amendments and shall do so freely when the presentation of the merits of the cause will otherwise be subserved. The court shall liberally allow a continuance in the event an amendment is allowed to enable the objecting party to meet the evidence.
- (6) The hearing, and any other proceedings regarding the petition, shall be recorded. [As amended by order filed November 28, 2007; and by order filed January 22, 2009.]

NOTES TO DECISIONS

ANALYSIS

1. Limited Scope of Cross-Examination.
2. Scope of Cross-Examination in Post-Conviction Evidentiary Hearing.
3. Burden of Proof.
4. Denial of Relief.
5. Waiver.

1. Limited Scope of Cross-Examination.

Post-conviction petitioner was entitled to a new evidentiary hearing because he was deprived of the limited scope of cross-examination provided in Tenn. Sup. Ct. R. 28, § 8(C)(1)(d) where his testimony supporting his claim of ineffective assistance of counsel was critical to his ability to prove the claim by clear and convincing proof. *Keough v. State*, 356 S.W.3d 366, 2011 Tenn. LEXIS 1140 (Tenn. Dec. 9, 2011).

2. Scope of Cross-Examination in Post-Conviction Evidentiary Hearing.

With respect to the testimony of a post-conviction petitioner, the specific limitation provided in Tenn. Sup. Ct. R. 28, § 8(C)(1)(d) controls the scope of cross-examination and modifies the general rule provided in Tenn. R. Evid. 611(b). *Keough v. State*, 356 S.W.3d 366, 2011 Tenn. LEXIS 1140 (Tenn. Dec. 9, 2011).

3. Burden of Proof.

Defendant failed to carry defendant's burden of establishing deficient performance or prejudice by defendant's trial counsel because defendant at a hearing for post-conviction relief did not produce witnesses or testimony regarding whether the witnesses could have been reasonably located. Moreover, defendant provided no information or argument as to what testimony

or information the witnesses would have provided or why they were not available. *Borum v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 109 (Tenn. Crim. App. Feb. 15, 2019).

Defendant was not entitled to post-conviction relief because defendant failed to present clear and convincing evidence that trial counsel provided ineffective assistance by failing to use a peremptory challenge to remove a juror who was a guard at the penitentiary and knew that defendant had been an inmate at the penitentiary, failing to object to testimony that defendant previously had been incarcerated at the penitentiary, and failing to advise defendant of the State of Tennessee's plea settlement offer. *Matthews v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 155 (Tenn. Crim. App. Mar. 11, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 305 (Tenn. July 17, 2019).

Defendant did not prove by clear and convincing evidence that trial counsel rendered ineffective assistance by failing to properly object when an alleged victim was declared to unavailable as a witness after the victim refused to testify because, without the statement of the victim to a police officer, or the testimony of the officer who purportedly took the statement, the appellate court was unable to conclude that defendant was prejudiced. *Lawson v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 186 (Tenn. Crim. App. Mar. 26, 2019).

4. Denial of Relief.

Defendant's petition for post-conviction relief was properly denied because post-trial counsel was not ineffective in failing to present an alleged recantation by the victim as counsel repeatedly asked the State for proof that the victim had recanted his testimony, but he never

received anything; although defendant's father allegedly saw the victim's recantation, he never testified that he discussed the recantation with post-trial counsel; and defendant failed to establish that the recantation ever existed. *Steed v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 21 (Tenn. Crim. App. Jan. 11, 2019).

Petitioner failed to establish deficient performance or prejudice on the part of trial counsel, and petitioner was not entitled to post-conviction relief. Although trial counsel was aware of the victim's different descriptions of a gun used in a robbery prior to trial, trial counsel emphasized that the victim never said that there was not a gun involved in the robbery and that the color of the gun was not relevant. *Ridley v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 20 (Tenn. Crim. App. Jan. 16, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 360 (Tenn. June 3, 2020).

Post-conviction court properly denied defendant's motion for relief because he failed to show that trial counsel rendered deficient performance by failing to adequately consult with him prior to defendant entering the guilty pleas or that his guilty plea was not knowingly, voluntarily, and intelligently made, since defendant specifically told the trial court that trial counsel had done a good job, provided him with discovery, and discussed the nature and terms of the plea agreement with him. *Degroat v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 331 (Tenn. Crim. App. May 11, 2020).

Defendant's petition for post-conviction relief was properly denied because counsel was not ineffective for failing to object to improper witness testimony as an agent's statement that it was impossible to collect fingerprints and DNA from the same source was not shown to be incorrect; and the 9-1-1 operator acted as the keeper of the records at trial, and her testimony was admitted to authenticate the veracity of the recording. *Stitts v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 356 (Tenn. Crim. App. May 20, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 578 (Tenn. Sept. 21, 2020).

Defendant's petition for post-conviction relief was properly denied because counsel was not ineffective for failing to adequately cross-examine the victim as trial counsel's decision not to aggressively cross-examine a sympathetic victim about the disability she suffered as a result of a shooting was reasonable; the victim's testimony that defendant had been stalking her and taking violent actions against her was not refuted by defendant's claim that he was dating someone else at the time of the offense; and the decision of trial counsel to focus the defense strategy on more relevant aspects of the case was reasoned and strategic, and therefore not deficient. *Stitts v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 356 (Tenn. Crim. App. May 20, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 578 (Tenn. Sept. 21, 2020).

Defendant's petition for post-conviction relief was properly denied because counsel was not ineffective for failing to conduct a proper investigation as he did not show how trial counsel's failure to test the gun for fingerprints, to have the blood evidence tested to ensure that it was human blood, to hire experts in blood-spatter analysis or forensic toxicology, and to investigate the crime scene fell below an objective standard of reasonableness under prevailing professional norms. *Stitts v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 356 (Tenn. Crim. App. May 20, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 578 (Tenn. Sept. 21, 2020).

Defendant's petition for post-conviction relief was properly denied because counsel was not ineffective for failing to ensure juror impartiality as the trial court instructed the victim's family to turn the domestic abuse support shirts they were wearing inside out; and trial counsel questioned the jury venire on whether they could apply the presumption of innocence and reasonable doubt standard, whether they knew defendant, the victim, or other jurors, whether they had an inherent bias about domestic abuse, and whether they had a bias toward the police and their testimony. *Stitts v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 356 (Tenn. Crim. App. May 20, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 578 (Tenn. Sept. 21, 2020).

Although defendant claimed that defendant's trial counsel denied defendant of defendant's fundamental right to testify, defendant failed to prove that counsel's performance as to this issue was deficient or prejudicial because, although counsel encouraged defendant not to testify, it was ultimately defendant's decision to voluntarily and personally waive the right to testify. *Alvarado v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 638 (Tenn. Crim. App. Sept. 25, 2020).

Defendant failed to prove that defendant's trial counsel was ineffective for failing to present witnesses and evidence in defendant's favor as counsel testified that counsel interviewed proposed witnesses, but did not believe that they could provide a solid alibi, and defendant did not establish prejudice in that defendant failed to present the witnesses at a post-conviction hearing. Defendant also failed to show how counsel was deficient in failing to present defendant's employment records and how defendant was prejudiced by this decision. *Alvarado v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 638 (Tenn. Crim. App. Sept. 25, 2020).

In a petition for post-conviction relief, defendant's guilty plea was entered knowingly and voluntarily as the guilty plea colloquy showed that the trial court engaged defendant in an extensive series of questions to ensure that he understood the rights he was waiving by entering the guilty plea; and the post-conviction

court determined that defendant was being untruthful in his assertion that the location where he was to serve his sentence was a material part of his guilty plea. *Aldridge v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 648 (Tenn. Crim. App. Sept. 29, 2020).

Trial counsel was not ineffective because, during the guilty plea colloquy, counsel advised the court that he would be recommending defendant for placement at a special needs facility, and the trial court noted the recommendation on the judgment form; and counsel testified at the post-conviction hearing that he neither misled defendant into believing nor guaranteed to defendant that he would serve his sentence at the special needs facility. *Aldridge v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 648 (Tenn. Crim. App. Sept. 29, 2020).

Defendant failed to prove that defendant received ineffective assistance of counsel regarding defendant's guilty plea because defendant failed to show that counsel was deficient in failing to properly investigate the case, was deficient as to discovery, was deficient in not meeting with defendant at the jail, was deficient in failing to adequately meet with defendant, and was deficient in advising defendant as to sentencing. Furthermore, defendant failed to prove that the guilty plea was unknowingly or involuntarily entered because of counsel. *Mitchell v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 682 (Tenn. Crim. App. Oct. 16, 2020).

Defendant was not entitled to post-conviction relief because any error by trial counsel in failing to object to the testimony of a witness, who was responsible for monitoring inmate phone calls for the sheriff's office, regarding the recordings of defendant's phone calls from jail on the ground that the State of Tennessee had not qualified the witness as an expert in voice recognition was harmless as defendant readily admitted under cross-examination at trial that it was defendant's voice on the calls. *Harris v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 683 (Tenn. Crim. App. Oct. 16, 2020).

Defendant was not entitled to post-conviction relief because defendant did not prove that trial counsel was ineffective by not calling witness as defendant failed to present the proposed witnesses or a mental health expert at the post-conviction hearing. Defendant also failed to establish that trial counsel was ineffective in failing to present a mental health defense as there was no proof at the post-conviction hearing to establish if or how defendant's diagnosis of generalized anxiety disorder impacted the offense. *Harris v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 683 (Tenn. Crim. App. Oct. 16, 2020).

Defendant's petition for post-conviction relief was properly denied because defendant failed to show that his guilty plea was not knowingly, voluntarily, and intelligently made with the effective assistance of counsel as he stated that he was not forced to enter his plea and that no one had promised him anything; and he admitted that he never told the trial court at the guilty plea submission hearing that he felt pressured to accept the plea. *Griffin v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 762 (Tenn. Crim. App. Nov. 30, 2020).

Defendant's petition for post-conviction relief was properly denied as trial counsel was not ineffective for failing to file a motion to continue to have more time to consider and research the issue of the jail calls because he did not demonstrate that a motion to continue would have been granted; he did not show or allege in his brief how a continuance or additional research would have changed the outcome of his case; and the post-conviction court accredited trial counsel's testimony that he was prepared for trial. *Griffin v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 762 (Tenn. Crim. App. Nov. 30, 2020).

Defendant's petition for post-conviction relief was properly denied as trial counsel was not ineffective for failing to file a motion to suppress the jail calls with his mother because, while counsel did not file a motion to suppress the calls, he filed a motion in limine to exclude the portions of the calls during which defendant made reference to what he said in the police interrogation that had been suppressed pursuant to an earlier suppression motion filed by initial counsel; and he failed to prove that a motion to suppress would have been granted. *Griffin v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 762 (Tenn. Crim. App. Nov. 30, 2020).

5. Waiver.

Defendant did not waive the issue of trial counsel's failure to object to testimony regarding defendant's prior incarceration because, although defendant did not explicitly include in petitions a claim that counsel was ineffective for failing to object to the testimony, defendant did generally claim that defendant received ineffective assistance. Further, when defendant raised the issue during the post-conviction hearing, the State of Tennessee never objected on the basis that defendant failed to include the issue in post-conviction petitions. *Matthews v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 155 (Tenn. Crim. App. Mar. 11, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 305 (Tenn. July 17, 2019).

Sec. 9. Determination & Relief

(A) **Decision** — The court shall enter an order granting or denying the petition within sixty (60) days of the conclusion of the proof. The order shall contain specific findings of fact and conclusions of law relating to each issue presented. The deadline for entry of the order shall not be extended unless the court finds that unforeseeable circumstances make an extension a manifest necessity. In such circumstances, the order shall not be delayed more than thirty (30) days beyond the original deadline.

(B) **Availability of Relief** — A petitioner shall be entitled to post-conviction relief when petitioner's conviction or sentence is void or voidable because of the violation of any right guaranteed by the state or federal constitution, including a right not recognized as existing at the time of the trial or sentencing if either constitution requires retrospective application of that right.

(C) **Orders Granting Relief** — If the court finds that petitioner is entitled to relief, the court shall enter an order vacating and setting aside the judgment of conviction or sentence or an order granting a delayed appeal. The court shall also enter any other appropriate supplementary orders that may be necessary and proper.

(D) **Grant of a Delayed Appeal** — (1) By the Trial Court —

(a) Appeal as of Right Pursuant to T.R.A.P. 3— Upon determination by the trial court that the petitioner was deprived of the right to file an appeal pursuant to T.R.A.P. 3, the trial court shall apply the procedures set out in Tenn. Code Ann. § 40-30-113.

(b) Appeal Pursuant to T.R.A.P. 11 —

(i) Upon determination by the trial court that the petitioner was deprived of the right to request an appeal pursuant to T.R.A.P. 11, the trial court shall enter an order granting the petitioner a delayed appeal, staying the post-conviction proceedings pending the final disposition of the delayed appeal, and providing that the order is final for purposes of appeal under this rule.

(ii) The State may appeal to the Court of Criminal Appeals as of right from the trial court's grant of a delayed appeal by filing a notice of appeal with the trial court clerk within thirty (30) days of entry of the trial court's order granting the delayed appeal. The appeal shall then proceed in accordance with the Tennessee Rules of Appellate Procedure as in any appeal as of right. If the Court of Criminal Appeals does not reverse the trial court's order granting a delayed appeal, the State may file an application for permission to appeal under T.R.A.P. 11, and the case shall then proceed in accordance with that rule until final disposition by the Supreme Court. If the State does not file a Rule 11 application, the petitioner has sixty (60) days from the issuance of the mandate of the Court of Criminal Appeals to file the delayed Rule 11 application with the Supreme Court. If the State files a Rule 11 application, but the Supreme Court denies the application or grants the application but does not reverse the trial court's order granting a delayed appeal, the petitioner shall have sixty (60) days from the issuance of the mandate of the Supreme Court to file the delayed Rule 11 application.

(iii) If the State chooses not to appeal the trial court's grant of a delayed appeal, the State shall file a notice of its intention not to appeal within thirty (30) days of entry of the trial court's order granting a delayed appeal. The

petitioner has sixty (60) days from the date of filing of this notice to file the delayed Rule 11 application. In the event the State fails to file this notice, the delayed Rule 11 application will be considered timely if filed within ninety (90) days of entry of the trial court's order granting a delayed appeal.

(iv) Upon the filing of a delayed Rule 11 application in accordance with this rule, the Appellate Court Clerk shall immediately reinstate the original appeal on the docket and serve notice on all parties. The case shall then proceed in accordance with T.R.A.P. 11.

(2) By the Appellate Court—

(a) Appeal as of Right Pursuant to T.R.A.P. 3, If the trial court determines that the petitioner was not deprived of the right to appeal pursuant to T.R.A.P. 3, this ruling may be challenged as part of any Rule 3 appeal from the trial court's final judgment in the post-conviction proceedings. The Court of Criminal Appeals shall consider and resolve this issue along with any other issues raised in the post-conviction appeal. Should the Court of Criminal Appeals grant a delayed appeal, the post-conviction appeal shall not be stayed; instead, any party may challenge the decision of the Court of Criminal Appeals, or any portion thereof, by filing an application for permission to appeal pursuant to T.R.A.P. 11.

(b) Appeal Pursuant to T.R.A.P. 11—

(i) If the trial court determines that the petitioner was not deprived of the right to request an appeal pursuant to Rule T.R.A.P. 11, this ruling may be challenged as part of any Rule 3 appeal from the trial court's final judgment in the post-conviction proceedings. The Court of Criminal Appeals shall consider first the trial court's denial of the delayed appeal before resolving other issues raised in the post-conviction appeal. If the Court of Criminal Appeals determines that the trial court properly denied the request, the Court of Criminal Appeals shall dispose of the remaining issues in the post-conviction appeal. If, however, the Court of Criminal Appeals determines that the trial court erred in denying the delayed appeal, the Court of Criminal Appeals shall enter an order granting the petitioner a delayed appeal and staying the post-conviction proceedings pending the final disposition of the delayed appeal.

(ii) If the Court of Criminal Appeals grants a delayed appeal, the State may file an application for permission to appeal pursuant to T.R.A.P. 11, within sixty (60) days from the date of the filing of the order of the Court of Criminal Appeals. The case shall then proceed in accordance with Rule 11. If the Supreme Court denies the Rule 11 application or grants the application but does not reverse the intermediate court's order granting a delayed appeal, the petitioner shall have sixty (60) days from the issuance of the mandate of the Supreme Court to file a delayed Rule 11 application. If the State does not file a Rule 11 application, the petitioner has sixty (60) days from the issuance of the mandate of the Court of Criminal Appeals to file the delayed Rule 11 application with the Supreme Court.

(iii) Upon the filing of a delayed Rule 11 application in accordance with this rule, the Appellate Court Clerk shall immediately reinstate the original appeal on the docket and serve notice on all parties. The case shall then proceed under T.R.A.P. 11.

(3) New Issues Resulting from Delayed Appeal —

(a) Where a delayed appeal is granted and the petitioner is unsuccessful on appeal, and new issues cognizable in a post-conviction proceeding result from the handling of the delayed appeal, the petitioner may amend the original post-conviction petition to include such new issues.

(b) Where the post-conviction appeal has been stayed in the Court of Criminal Appeals, the case may be remanded to the trial court for the taking of evidence on any new issues resulting from an unsuccessful delayed appeal. [As amended by order filed May 8, 2001; by order filed October 22, 2002; and by order filed August 25, 2003.]

NOTES TO DECISIONS

ANALYSIS

1. Post-Conviction Relief Procedure.
2. Delayed Appeal.

1. Post-Conviction Relief Procedure.

Postconviction court erred by failing to follow the proper procedure outlined in T.C.A. § 40-30-113(a)(3), allowing the inmate to file a proper motion for a new trial within 30 days, and Tenn. R. Sup. Ct. 28, § 9(D)(1)(b)(i), directing the postconviction court to stay the original petition until the delayed appeal was completed, prior to granting the inmate a delayed appeal. *Moore v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 95 (Tenn. Crim. App. Feb. 15, 2019).

On remand from the appellate court, the post-conviction court entered an order that set out its findings of fact and conclusions of law regarding petitioner's ground for relief. There-

fore, the record was sufficient for the appellate court to conduct a review. *Lewis v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 417 (Tenn. Crim. App. July 12, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 546 (Tenn. Dec. 10, 2019).

2. Delayed Appeal.

Because appellate counsel for defendant failed to file a timely application for permission to appeal to the Supreme Court of Tennessee, so that defendant was denied the opportunity for substantive review by the Supreme Court, defendant was entitled to a delayed appeal for the purpose of seeking Supreme Court review of defendant's conviction proceedings. As a result defendant's ineffective assistance of counsel allegations were held in abeyance pending the resolution of the delayed appeal. *Ruby-Ruiz v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 616 (Tenn. Crim. App. Oct. 2, 2019).

Sec. 10. Appeals

(A) **Dismissals or Denials of Petition** — An appeal from the dismissal or denial of a post-conviction petition shall be in accordance with the Tennessee Rules of Appellate Procedure.

(B) **Denials of Motions to Reopen** — A petitioner whose motion to reopen is denied shall have thirty (30) days to seek permission to appeal by filing an application, accompanied by the order denying the motion, in the Court of Criminal Appeals. The state shall have thirty (30) days to respond. The Court of Criminal Appeals may allow the parties to file additional briefs, argue the case, or both. In the event the Court of Criminal Appeals finds that the trial court abused its discretion by denying the motion to reopen, the court shall, by order, remand the case to the trial court for further proceedings.

When the Court of Criminal Appeals affirms the trial court's decision denying the motion to reopen, the petitioner shall have sixty (60) days from the date of the Court of Criminal Appeals decision to seek permission to appeal in the Tennessee Supreme Court by filing an application pursuant to Rule 11, Tenn. R. App. P. The application shall be accompanied by copies of all documents filed by both parties in the trial court and the orders denying the motion in the trial court and the Court of Criminal Appeals. The State shall have fifteen (15) days to file a response. The Supreme Court may allow the

parties to file additional briefs, argue the case, or both. Permission to appeal will be denied unless it appears that the trial court abused its discretion by denying the motion to reopen. In the event the Supreme Court determines that the trial court abused its discretion by denying the motion, the Supreme Court, by order, shall remand the case to the trial court for further proceedings.

(C) **Motions for Review of Motions for Stay** — Either party may request review of a trial court's ruling on a motion for stay of execution by filing a motion for review in the Tennessee Court of Criminal Appeals within five (5) days of the trial court's ruling on the stay of execution. The Court of Criminal Appeals may allow the opposing party to respond in writing within three (3) days of the service of the motion for review or may ascertain the party's position by other means. Oral argument shall not be permitted unless ordered by the appellate court. A single judge of the appellate court, or a three-judge panel, shall rule on the motion within five (5) days of the filing of the motion for review. In the event the appellate court finds that the lower court abused its discretion in ruling on the motion for a stay of execution, it shall set aside the order denying the stay and enter an order either granting or denying the stay, as appropriate. Review of the Court of Criminal Appeals' action may be sought in the Supreme Court. In the event review is sought in the Supreme Court, the procedures for filing and processing the motion shall be the same as those for review in the Court of Criminal Appeals. [As amended by order entered August 25, 1997; and by order filed July 13, 2011, effective July 13, 2011.]

Sec. 11. Withdrawal of Post-Conviction Petition in Capital Case

(A) **Determination of Trial Court** — Before allowing a petitioner under sentence of death to withdraw the petitioner's post-conviction petition, the trial court shall address the petitioner personally in open court and ascertain that the petitioner:

- (1) does not desire to proceed with any post-conviction proceedings;
- (2) understands the significance and consequences of withdrawing the post-conviction petition; and
- (3) is knowingly, intelligently, and voluntarily, without coercion, withdrawing the petition; and
- (4) is competent to decide whether to withdraw the post-conviction petition.

The hearing at which the trial court addresses the petitioner shall be recorded. At the hearing the trial court may consider any evidence and argument relevant to items (1) through (4). The trial court shall enter an order granting or denying withdrawal of the petition and stating the court's findings regarding items (1) through (4). An order of the trial court granting withdrawal and dismissing the petition shall become final thirty days after its entry.

(B) **Competency** — (1) The standard for determining competency of a petitioner to withdraw a post-conviction petition and waive further post-conviction relief under this section is: whether the petitioner possesses the present capacity to appreciate the petitioner's position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner's capacity.

(2) A petitioner is presumed competent to withdraw a post-conviction petition and waive post-conviction relief; however, if a genuine issue regarding

the petitioner's present competency arises during the hearing provided for in (A), *supra*, the trial court shall enter an order appointing at least one, but no more than two, mental health professionals from lists submitted by the State and counsel for the petitioner. The order shall direct that the petitioner be evaluated by the appointed mental health professionals to determine the petitioner's competency and that the appointed mental health professionals file written evaluations with the trial court within ten days of the appointment unless good cause is shown for later filing. Upon filing, the trial court clerk shall forward a copy of the written evaluations to counsel for the petitioner and to the State.

(3) If a genuine issue regarding the petitioner's present competency exists after the filing of evaluations by the appointed mental health professionals, the trial court shall hold a separate hearing on the record, allowing the introduction of testimony, exhibits and evidence, to determine the petitioner's competency. After the hearing, the trial court shall file detailed written findings of fact regarding the court's competency determination, which shall be included in the court's order granting or denying withdrawal of the petition.

(C) **Appeal** — Whenever a trial court determines that the petitioner is competent to withdraw the petition, the order of the trial court finding the petitioner competent and dismissing the petition may be appealed under T.R.A.P. 3. If the trial court has granted a motion for dismissal of post-conviction counsel, post-conviction counsel shall nonetheless have standing to appeal the sole question of whether the petitioner was competent to withdraw the petition. The issue of competency will be reviewed as an issue of fact and the trial court's finding will be presumed correct, unless the evidence in the record preponderates against it. [Added by order filed November 21, 2002]

NOTES TO DECISIONS

ANALYSIS

1. Knowing, Intelligent, and Voluntary.
2. Competency.

1. Knowing, Intelligent, and Voluntary.

Tennessee's courts should employ the mental competency standard of Tenn. Sup. Ct. R. 28, § 11(B) whenever the issue of a prisoner's competency to pursue post-conviction relief is properly raised. *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 2013 Tenn. LEXIS 84 (Tenn. Jan. 24, 2013), cert. denied, *Reid ex rel. Martiniano v. Tennessee*, 2013 U.S. LEXIS 6016, 134 S. Ct. 224, 571 U.S. 894, 2013 U.S. LEXIS 6016 (U.S. 2013).

2. Competency.

Due process considerations did not require tolling of the statute of limitations for defendant's petition for post-conviction relief because defendant did not establish incompetence, by clear and convincing evidence, due to defendant's learning disability and it was defendant's choice not to engage with the clerk in the law library or any other inmate or person who could help defendant with defendant's case. *Delk v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 102 (Tenn. Crim. App. Feb. 19, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 444 (Tenn. July 7, 2020).

Sec. 12. Citation These rules may be cited as Tenn. Sup. Ct. R. 28, § _____. [Adopted by order entered November 17, 1995; amended by order entered July 1, 1996; and by order filed October 28, 1996.]

NOTES TO DECISIONS

ANALYSIS

1. In General.
2. Transcript.
3. Right to Counsel and Hearing.
4. Construction with Other Sections.
5. Amendment.
6. Filing.
7. Colorable Claim.

1. In General.

To the extent that *Coker v. State*, 911 S.W.2d 357, 1995 Tenn. Crim. App. LEXIS 462 (Tenn. Crim. App. 1995), overruled in part, *State v. West*, 19 S.W.3d 753, 2000 Tenn. LEXIS 244 (Tenn. 2000) conflicts with Tenn. Sup. Ct. R. 28, it is impliedly overruled. *State v. West*, 19 S.W.3d 753, 2000 Tenn. LEXIS 244 (Tenn. 2000).

2. Transcript.

Failure to comply with Tenn. Sup. Ct. R. 28, § 6(B)(3)(d) by not requiring the production of a transcript was harmless error due to defendant's post-conviction testimony which indicated his plea was voluntarily entered. *Lane v. State*, 968 S.W.2d 912, 1997 Tenn. Crim. App. LEXIS 1141 (Tenn. Crim. App. 1997).

3. Right to Counsel and Hearing.

Where the trial court ordered an amendment of a petition for post-conviction relief, and expressly advised the petitioner that the factual basis for his claimed grounds had to be provided, the trial court was not required to appoint counsel for the purpose of providing the factual basis for the petitioner's claims. *Pewitt v. State*, 1 S.W.3d 674, 1999 Tenn. Crim. App. LEXIS 180 (Tenn. Crim. App. 1999).

Where there was no evidence or allegation that defendant abused the post-conviction process, the trial court erred by allowing counsel to withdraw based on counsel's assertions of defendant's unreasonable demands and failing to appoint new counsel without conducting a hearing. *Leslie v. State*, 36 S.W.3d 34, 2000 Tenn. LEXIS 716 (Tenn. 2000), rehearing denied, — S.W.3d —, 2001 Tenn. LEXIS 96 (Tenn. Jan. 30, 2001).

4. Construction with Other Sections.

Tenn. Sup. Ct. R. 28 and T.C.A. § 40-30-209 (now T.C.A. § 40-30-109), and not the Public

Records Act, compiled in T.C.A. § 10-7-503, governed discovery in inmate's post-petition appeal. *Waller v. Bryan*, 16 S.W.3d 770, 1999 Tenn. App. LEXIS 698 (Tenn. Ct. App. 1999), review or rehearing denied, — S.W.3d —, 2000 Tenn. LEXIS 234 (Tenn. Apr. 17, 2000).

Tenn. Sup. Ct. R. 28, § 6(C)(7) does not require the state to provide petitioner discovery of all those items deemed discoverable under Tenn. R. Crim. P. 16. *House v. State*, 44 S.W.3d 508, 2001 Tenn. LEXIS 419 (Tenn. 2001).

5. Amendment.

Trial court erred by dismissing defendant's pro se petition for post-conviction relief for failure to follow the prescribed form where the defendant was not afforded reasonable opportunity to amend the petition with the assistance of counsel. *Hutcherson v. State*, 75 S.W.3d 929, 2001 Tenn. Crim. App. LEXIS 772 (Tenn. Crim. App. 2001).

6. Filing.

Where defendant had alleged sufficient facts to make a threshold showing that he had complied with Tenn. Sup. Ct. R. 28, § 4, defendant was entitled to an evidentiary hearing to determine whether his alleged original postconviction petition was timely filed. *Butler v. State*, 92 S.W.3d 387, 2002 Tenn. LEXIS 704 (Tenn. 2002).

Determining who was an "appropriate individual" for purposes of filing postconviction petitions under Tenn. Sup. Ct. R. 28, § 2(G) or Tenn. R. Crim. P. 49(c) was a question of fact best resolved by the various trial courts of the state, and the Tennessee supreme court declined to adopt a bright-line rule. *Butler v. State*, 92 S.W.3d 387, 2002 Tenn. LEXIS 704 (Tenn. 2002).

7. Colorable Claim.

Defendant's petition stated a claim that would entitle him to relief under Tenn. Sup. Ct. R. 28, § 2(H); defendant linked his convictions and his consecutive sentences to his attorney's deficient performance and suggested that a fair trial was impossible under the circumstances. *Arnold v. State*, 143 S.W.3d 784, 2004 Tenn. LEXIS 694 (Tenn. 2004).

APPENDIX A. FORM PETITION

The following form petition shall be available without cost to a prisoner in the prisons and other places of detention and shall also be available without cost to any potential petitioner in the office of the clerk of court for any court of record with criminal jurisdiction. The standard form, together with Tenn. Code Ann. § 40-30-102(c), is designed to achieve early finality in post-conviction proceedings through one comprehensive petition and one full and fair hearing at which all grounds for challenging the validity of a conviction or sentence will be considered.

READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING THE PETITION

(1) This petition must be legibly handwritten or typewritten. It must be signed by petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction of petitioner for perjury. All questions must be answered completely in the proper space on the form or on additional sheets submitted with the form. This form may be obtained at the place of confinement or from any clerk of a court of record with criminal jurisdiction.

(2) No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum and not as part of this form.

(3) A separate petition must be filed for each judgment you seek to challenge. If you seek to challenge judgments entered in different trials or guilty plea proceedings, either in the same county or in different counties, you must file separate petitions.

(4) YOU MUST INCLUDE IN THIS PETITION ALL GROUNDS FOR RELIEF. FAILURE TO INCLUDE A GROUND FOR RELIEF IN THIS PETITION WILL RESULT IN YOUR BEING PERMANENTLY BARRED FROM PRESENTING IT IN A FUTURE PETITION OR PROCEEDING.

(5) YOU MUST INCLUDE ALL FACTS SUPPORTING EACH GROUND FOR RELIEF. YOU MUST BE AS SPECIFIC AS POSSIBLE AS TO THE FACTS.

(6) Complete all applicable items in the petition. When the petition is fully completed, the ORIGINAL must be mailed to the appropriate clerk of court.

(7) You must comply with these instructions in order to have your petition promptly considered.

(8) REMEMBER, A PETITIONER IS ENTITLED TO FILE ONLY ONE PETITION PER CASE.

IN THE _____ COURT OF
_____ COUNTY, TENNESSEE AT _____

_____)	
PETITIONER (FULL NAME))	
)	
)	CASE NO. _____
VS.)	
)	(POST-CONVICTION)
)	
STATE OF TENNESSEE)	

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

Mailing Address of Petitioner _____
(including zip code) _____

Place of Confinement _____
Dep't of Corrections Number _____

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY THE
ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence challenged
- _____
- _____
2. Date of judgment of conviction _____
3. Case Number _____
4. Length of sentence _____
5. Offense Convicted of _____
- _____
- _____
6. What was your plea? (Check One)
- (a) Guilty _____
- (b) Not Guilty _____
- (c) Not Guilty by reason of mental disease or defect _____
- (d) Not guilty and not guilty by reason of mental disease or defect _____
- (e) Nolo contendere _____
- (f) None _____
- If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify.
- (a) guilty plea counts: _____
- (b) not guilty counts: _____

7. Kind of trial: (Check One)

(a) Jury _____ (b) Judge only _____

8. Did you testify at the trial?

Yes _____ No _____

9. Did you appeal from the judgment of conviction?

Yes _____ No _____

10. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court _____

(2) Result _____

(3) Date of result _____

(4) Grounds raised on appeal _____

(Attach additional sheets if necessary)

11. If more than one (1) year has passed since the date of final action on your direct appeal by the state appellate courts, state why the statute of limitations should not bar your claim.

12. Other than a direct appeal from the judgment(s) of conviction and

sentence, have you previously filed any petitions, applications, or motions with respect to the judgment(s) in any state or federal court?

Yes _____ No _____

13. If your answer to Question 12 was Yes, then give the following information in regard to the first such petition, application, or motion you filed:

- (a) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- _____

(Attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

- (5) Result _____
- (6) Date of result _____

(b) As to any second petition, application, or motion, give same information:

- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- _____

(Attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

- (5) Result _____
- (6) Date of result _____

(c) Did you appeal the result of the action taken on any petition, application, or motion identified above?

- (1) First petition, etc. Yes _____ No _____
- (2) Second petition, etc. Yes _____ No _____

(d) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not appeal: _____

14. If you did not raise the grounds you raised here in your original prosecution and on your appeal from that prosecution, explain why your claim in this case has not been waived for failure to raise it on appeal. If the claim was raised, explain why your claim is not previously determined.

15. If you have previously filed a petition, application, or motion with respect to the judgment(s) in any court, explain why your claim in this case has not been waived for failure to raise it in that prior proceeding. If the claim was raised, explain why your claim is not previously determined.

16. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information or by attaching separate pages.
INCLUDE ALL FACTS WHICH SUPPORT THE GROUNDS YOU CLAIM.

GROUND(S) OF PETITION

Listed below are possible grounds for relief. Consider the ground(s) that apply in your case, and follow the instruction under the ground(s):

- _____ (1) Conviction was based on unlawfully induced guilty plea or guilty plea involuntarily entered without understanding of the nature and consequences of the plea.
- _____ (2) Conviction was based on use of coerced confession.
- _____ (3) Conviction was based on use of evidence gained pursuant to an unconstitutional search and seizure.
- _____ (4) Conviction was based on use of evidence obtained pursuant to an unlawful arrest.
- _____ (5) Conviction was based on a violation of the privilege against self incrimination.
- _____ (6) Conviction was based on the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to defendant.
- _____ (7) Conviction was based on a violation of the protection against double jeopardy.
- _____ (8) Conviction was based on action of a grand or petit jury that was unconstitutionally selected and impaneled.
- _____ (9) Denial of effective assistance of counsel.
- _____ (10) Newly discovered evidence.
- _____ (11) Illegal evidence.
- _____ (12) Other grounds.

THE LIST ABOVE DOES NOT INCLUDE A COMPLETE LIST OF ALL CONSTITUTIONAL VIOLATIONS. YOU MAY ADD ANY OTHERS YOU DEEM APPROPRIATE. ATTACH A SEPARATE SHEET OF PAPER LISTING EACH CONSTITUTIONAL VIOLATION THAT YOU CLAIM, WHETHER OR NOT IT IS LISTED ABOVE. UNDER EACH CLAIMED VIOLATION YOU CLAIM, LIST EACH AND EVERY FACT YOU FEEL SUPPORTS THIS GROUND. EXPLAIN IN DETAIL HOW YOU ARE PREJUDICED BY THE VIOLATION AND WHY YOU ARE ENTITLED TO RELIEF. BE SPECIFIC. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS: TENN. CODE ANN. § 40-30-102(c) LIMITS YOU TO ONLY ONE PETITION. TENN. CODE ANN. § 40-30-102(c) PROVIDES:

This chapter contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-

conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.

17. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No _____

18. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from adverse ruling in a post-conviction proceeding _____

19. Are you currently represented by counsel?

Yes _____ No _____

(a) If Yes, give name and address, if known, of the attorney representing you.

(b) If No, do you wish to have an attorney appointed?

Yes _____ No _____

(c) Has any attorney assisted in drafting or given advice regarding this petition for post-conviction relief?

Yes _____ No _____

If Yes, give name and address of attorney(s).

20. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes _____ No _____

21. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No _____

22. What date is this petition being given to prison authorities for mailing?

Wherefore, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

PETITIONER'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(Date)

Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 20____.

Notary Public

My commission expires: _____

APPENDIX B. AFFIDAVIT OF INDIGENCY

I, _____, do solemnly swear (or affirm) that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further swear (or affirm) that, to the best of my knowledge, I am justly entitled to the relief sought.

Petitioner

APPENDIX C. CERTIFICATION OF COUNSEL

CERTIFICATE

I, _____, certify that I have thoroughly investi-
(Appointed or retained counsel)

gated the possible constitutional violations alleged by petitioner, including all those in paragraph 16 petitioner's possible constitutional claims, including all those in paragraph 15 of the form petition set forth in Appendix A and any other ground that petitioner may have for relief. I have discussed other possible constitutional grounds with petitioner. I have raised all non-frivolous constitutional grounds warranted by existing law or a good faith argument for

the extension, modification, or reversal of existing law which petitioner has. I am aware that any ground not raised shall be forever barred by application of Tenn. Code Ann. § 40-30-106(g), and have explained this to petitioner.

Counsel for Petitioner

Board of Professional Responsibility Number

APPENDIX D. FORM MOTION TO REOPEN

The following form petition shall be available without cost to a prisoner in the prisons and other places of detention and shall also be available without cost to any potential petitioner in the office of the clerk of court for any court of record with criminal jurisdiction. The Post-Conviction Procedure Act contemplates the filing of only one (1) petition for post-conviction relief. A motion to reopen should be filed only under the limited circumstances set out in Tenn. Code Ann. § 40-30-117.

READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING THE PETITION

- (1) This petition must be legibly handwritten or typewritten and must be signed by petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered completely in the proper space on the form or on additional sheets submitted with the form. This form may be obtained at the place of confinement corrections institution where you are confined or from any clerk of a court of record with criminal jurisdiction.
- (2) No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum and not as part of this form.
- (3) A separate petition must be filed for each judgment you seek to challenge. Only the judgments entered in a single trial or guilty plea proceeding may be challenged in a particular petition. If you seek to challenge judgments entered in different trials or guilty plea proceedings, either in the same county or in different counties, you must file separate petitions.
- (4) YOU MUST INCLUDE IN THIS PETITION ALL GROUNDS FOR RELIEF. FAILURE TO INCLUDE A GROUND FOR RELIEF IN THIS PETITION WILL RESULT IN YOUR BEING BARRED FROM PRESENTING IT IN A FUTURE PETITION.
- (5) YOU MUST INCLUDE ALL FACTS SUPPORTING EACH GROUND FOR RELIEF. YOU MUST BE AS SPECIFIC AS POSSIBLE AS TO THE FACTS.
- (6) Complete all applicable items in the petition. When the petition is fully completed, the ORIGINAL must be mailed to the appropriate clerk of court.
- (7) You must comply with these instructions in order to have your petition promptly considered.
- (8) REMEMBER, A PETITIONER IS ENTITLED TO FILE ONLY ONE PETITION PER CASE.

IN THE _____ COURT OF _____ COUNTY, TENNESSEE
AT _____

PETITIONER (FULL NAME)

VS.

CASE NO. _____

STATE OF TENNESSEE

(POST-CONVICTION)

MOTION TO REOPEN POST-CONVICTION PETITION

Mailing Address of Petitioner _____
(including zip code) _____

Place of Confinement _____
Department of Corrections Number _____

**NOTICE: BEFORE COMPLETING THIS FORM, CAREFULLY READ THE
ACCOMPANYING INSTRUCTIONS.**

1. Name and location (city and county) of court which entered the judgment of conviction or sentence under attack _____

2. Date of judgment of conviction _____

3. Case Number _____

4. Length of sentence _____

5. Offense convicted of _____

6. What was your plea? (Check one)

- (a) Guilty _____
- (b) Not Guilty _____
- (c) Not Guilty by reason of mental disease or defect _____
- (d) Not guilty and not guilty by reason of mental disease or defect _____
- (e) Nolo contendere _____
- (f) None _____

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify:

- (a) Guilty plea counts: _____
- (b) Not guilty plea counts: _____

7. Give the following information in regard to the post-conviction proceeding(s) you seek to reopen at this time:

- (a) _____
 - (1) Name and location of post-conviction trial court _____
 - (2) Grounds raised _____

(attach additional sheets if necessary)

(3) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(4) Result _____

(5) Date of result _____

(b) Did you appeal to any appellate court the result of the action taken on that petition?

Yes _____ No _____

(c) If you did not appeal when you lost the petition, explain briefly why you did not appeal: _____

8. What grounds exist under Tenn. Code Ann. § 40-30-117 to justify reopening the first post-conviction petition? Check all that apply.

_____ (a) A state or federal appellate court has issued a final ruling establishing a constitutional right that was not recognized as existing at the time of trial but now is required to be recognized and applied in your case.

(1) What was the name and style of the case establishing the constitutional right?

(2) On what date was that opinion or ruling filed?

(3) If more than one (1) year has passed since the appellate court ruled establishing this new constitutional right, state why the one year statute of limitations should not bar you claim.

(4) Attach a separate sheet of paper listing each constitutional right that you claim that was not recognized as existing at the time of your trial but is now required to be recognized and applied in your case. Include all facts of your case which support your claim that this right now entitles you to relief. Specify how you were prejudiced.

_____ (b) There exists new scientific evidence that establishes that you are actually innocent of the offense or offenses for which you were convicted.

(1) What is the scientific evidence consist of? _____

(2) On what date did the scientific evidence come into existence? _____

(3) How and when did you become aware of the existence of this evidence? _____

(4) How does the evidence establish your actual innocence? _____

_____ (c) The sentence in this case was enhanced because of a prior conviction has subsequently been held to be invalid.

(1) Name and location of court which entered the judgment of the prior conviction. _____

(2) Case number of prior case. _____

(3) Name and location of court that held the prior conviction invalid. _____

(4) Date the conviction held invalid. _____

(5) Describe how the prior conviction was used to enhance the sentence you are now attacking. _____

(6) If more than one (1) year has passed since the date the prior conviction was set aside, state why the one year statute of limitations should not bar your claim. _____

9. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No _____

10. Give the name(s) and address(es), if known, of each attorney who represented you on your petition for post-conviction relief.

(a) In any post-conviction proceeding _____

(b) On appeal from adverse ruling in a post-conviction proceeding _____

11. Are you currently represented by counsel?

Yes _____ No _____

If Yes, give name and address, if known, of the attorney representing you.

If No, do you wish to have an attorney appointed?

Yes _____ No _____

12. Has any attorney assisted in drafting or given advice regarding drafting this petition for post-conviction relief?

Yes _____ No _____

If Yes, give name and address of attorney(s).

13. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at the same time?

Yes _____ No _____

14. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No _____

15. What date is this motion being given to prison authorities for mailing?

Wherefore, petitioner prays that the court grant petitioner's motion to reopen the post-conviction proceedings and grant any relief to which petitioner may be entitled in this proceeding.

APPENDIX E. AFFIDAVIT OF INDIGENCY

I, _____, do solemnly swear (or affirm) that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further swear (or affirm) that, to the best of my knowledge, I am justly entitled to the relief sought.

Petitioner

APPENDIX F. FORM PRELIMINARY ORDER

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE

AT _____

_____)	
PETITIONER)	
)	
VS.)	POST-CONVICTION NO. _____
)	
STATE OF TENNESSEE)	

PRELIMINARY ORDER
(COLORABLE CLAIM)

After examination of the (petition for post-conviction relief) or (motion to reopen) filed in this case, together with the files, records, transcripts and correspondence relating to the judgment under attack, this court finds as follows:

- (1) Petitioner is indigent under the standards of Tenn. Code Ann. § 40-14-201. The court hereby appoints _____ of the _____ (County Bar) (_____ District Public Defender's Office) to represent the petitioner.
- (2) The petition presents a colorable claim.
- (3) Counsel is hereby ordered to review the petition, consult with petitioner, and investigate all possible constitutional grounds for relief for the purpose of filing an amended petition, if necessary. The amended petition shall be filed within thirty (30) days of the date of this order. In the event no amended petition will be filed, counsel shall file a notice stating that no amended petition will be filed. In any event, counsel shall file the certificate of counsel required in post-conviction cases.
- (4) The District Attorney General is ordered to file an answer or other responsive pleading, together with any record or transcripts, material to the (petition) or (motion to reopen) within thirty (30) days of the filing of the amended petition or of the notice that no amended petition will be filed.
- (5) The District Attorney General is ordered to provide discovery to petitioner in accordance with Rule 16, Tennessee Rules of Criminal Procedure, to the extent relevant to the grounds in the petition. The District Attorney

General shall make all other disclosures required by the state and federal constitution.

(6) The District Attorney General shall file with the clerk the following items from the prior record:

ENTERED this _____ day of _____, 20____.

JUDGE

APPENDIX G. FORM PRELIMINARY ORDER

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE

AT _____

PETITIONER

VS.

STATE OF TENNESSEE

)
)
)
)
)
)

POST-CONVICTION NO. _____

PRELIMINARY ORDER
(NO COLORABLE CLAIM)

After examination of the (petition for post-conviction relief) or (motion to reopen) filed in this case, together with the files, record, transcripts and correspondence relating to the judgment under attack, this court finds as follows:

- (1) The petition shall be dismissed.
- (2) The petition shall be dismissed for failure to assert a colorable claim based on the following findings of fact:

_____ ; and

- (3) The petition shall be dismissed for failure to assert a colorable claim based on the following conclusions of law:

ENTERED this _____ day of _____, 20____.

JUDGE

APPENDIX H. FORM SCHEDULING ORDER

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE

AT _____

PETITIONER

VS.

STATE OF TENNESSEE

)
)
)
)
)
)
)

POST-CONVICTION NO. _____

SCHEDULING ORDER

In this matter, the court has reviewed the (petition) or (motion to reopen) and answer filed in this case and has concluded that a colorable claim is presented. In order to determine whether the petitioner is entitled to relief, an evidentiary hearing must be conducted.

It is therefore ORDERED that such hearing shall be held at _____ m. the _____ day of _____, 20____. (Within four months of scheduling order)

The sheriff of _____ County is hereby ordered to transport petitioner from the Department of Correction where he/she is presently housed to the _____ County Jail on the _____ day of _____, 20____, where he/she shall remain pending the conclusion of the evidentiary hearing in this court.

ENTERED this _____ day of _____, 20____.

JUDGE

Rule 29. Uniform Civil Affidavit of Indigency. Pursuant to Tenn. Code Ann. § 20-12-127(a), any civil action may be commenced by a resident of this state without giving security as required by law for costs and without payment of litigation taxes due by filing the oath of poverty set out in the statute and by filing an affidavit of indigency as prescribed by court rule. Pursuant to Tenn. Code Ann. § 20-12-127(a)(2), the uniform civil affidavit of indigency document appended to this rule is hereby adopted and shall be used in all such civil cases. The uniform civil affidavit of indigency shall also be used in all cases commenced pursuant to Tenn. Code Ann. § 20-12-128, § 20-12-129 (actions filed by next friends of infants) (pertaining to the pauper's oath in actions filed by guardians) and § 20-12-130 (actions filed by personal representatives).

In deciding whether a civil action commenced under a pauper's oath should be dismissed pursuant to § 20-12-132, the court shall consider the information required by the uniform civil affidavit of indigency. A person who meets the Legal Services Corporation's poverty guidelines published annually in the Code of Federal Regulations shall be presumed to be indigent for purposes of Tenn. Code Ann. § 20-12-127, § 20-12-128, § 20-12-129, and § 20-12-130. The

foregoing sentence does not preclude the court from finding that a person who does not meet the Legal Services Corporation's poverty guidelines is indigent for purposes of the pauper's oath statutes.

This rule shall not be interpreted to modify or repeal any provision contained in Tenn. Code Ann. §§ 41-21-801 through 41-21-818, which apply to claims filed by inmates. [Adopted by order entered December 29, 1995; amended by orders filed October 28, 1996; April 6, 2001; and June 21, 2001.]

NOTES TO DECISIONS

ANALYSIS

1. Litigation Tax.
2. Relationship to Other Laws.

1. Litigation Tax.

An indigent litigant is never permanently relieved from the duty of paying litigation taxes, although such payment may be deferred. *Fletcher v. State*, 9 S.W.3d 103, 1999 Tenn. LEXIS 678 (Tenn. 1999).

2. Relationship to Other Laws.

Tenn. Sup. Ct. R. 29 did not authorize a suspended attorney to proceed in forma pauperis to reinstate his law license where although the rule augmented and implemented T.C.A. § 20-12-127(a), it did not evidence any intent to apply either the statute or Rule 29 to attorney disciplinary proceedings. *Brooks v. Bd. of Prof'l Responsibility*, 578 S.W.3d 421, 2019 Tenn. LEXIS 173 (Tenn. May 7, 2019).

Uniform Civil Affidavit of Indigency

IN THE _____ COURT OF _____ COUNTY

(PLAINTIFF)

VS.

(DEFENDANT)

CASE NO: _____

UNIFORM CIVIL AFFIDAVIT OF INDIGENCY

I, _____, having been duly sworn according to law, make oath that because of my poverty, I am unable to bear the expenses of this case and that I am justly entitled to the relief sought to the best of my belief. The following facts support my poverty.

1. Full Name: _____
2. Address: _____
3. Telephone Number: _____
4. Date of Birth: _____
5. Names and Ages of All Dependents:

Relationship _____
Relationship _____
Relationship _____
Relationship _____
6. I am employed by: _____
My employer's address is: _____
My employer's phone number is: _____
7. My present income, after federal income and social security taxes are deducted, is: \$ _____
8. I receive or expect to receive money from the following sources:
AFDC \$ _____ per month beginning _____
SSI \$ _____ per month beginning _____
Retirement \$ _____ per month beginning _____
Disability \$ _____ per month beginning _____
Unemployment \$ _____ per month beginning _____
Worker's Compensation \$ _____ per month beginning _____
Other \$ _____ per month beginning _____

9. My expenses are:

Rent/House Payment	\$ _____	per month
Groceries	\$ _____	per month
Electricity	\$ _____	per month
Water	\$ _____	per month
Gas	\$ _____	per month
Transportation	\$ _____	per month
Medical & Dental	\$ _____	per month
Telephone	\$ _____	per month
School Supplies	\$ _____	per month
Clothing	\$ _____	per month
Child Care or Court Ordered Child Support	\$ _____	per month
Other	\$ _____	per month

10. Assets:

Automobile	\$ _____	(Fair Market Value)
Checking/Savings Account	\$ _____	
House	\$ _____	(Fair Market Value)
Other	\$ _____	

11. My debts are:

Amount Owed	To Whom
_____	_____
_____	_____
_____	_____

I hereby declare under the penalty of perjury that the foregoing answers are true, correct, and complete and that I am financially unable to pay the costs of this action.

PLAINTIFF

ORDER ALLOWING FILING ON PAUPER'S OATH

It appears based upon the Affidavit of Indigency filed in this cause and after due inquiry made that the Plaintiff is an indigent person and is qualified to file case on a pauper's oath.

It is so ordered this the _____ day of _____, 20____.

JUDGE

DETERMINATION OF NONINDIGENCY

It appearing based upon the Affidavit of Indigency filed in this cause and after due inquiry made that the Plaintiff is not an indigent person because

IT IS ORDERED AND ADJUDGED that the Plaintiff does not qualify for filing this case on a pauper's oath.

This the _____ day of _____, 20____.

JUDGE

NOTICE: If the judge determines that based upon your affidavit you are not eligible to proceed under a pauper's oath, you have the right to a hearing before the judge or, in those cases that can be appealed to Circuit Court, a hearing before the Circuit Court judge.

Rule 30. Media Guidelines.

A. Media Access. (1) **Coverage Generally.** Media coverage of public judicial proceedings in the courts of this State shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the presiding judge to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice in the pending cause.

(2) **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. The presiding judge may waive the two-day requirement at his or her discretion.

(3) **Notification of Request.** Notification that the media has requested such coverage shall be provided by the Clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to section D(2).

B. Definitions. (1) **"Coverage"** means any recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment.

(2) **"Media"** means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings.

(3) **"Proceeding"** means any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend. For the purposes of section C of this rule, "proceeding" includes any activity in the building in which the judicial proceeding is being held or any official duty performed in any location as part of the judicial proceeding.

(4) **“Presiding Judge”** means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceedings.

(5) **“Minor”** means any person under eighteen (18) years of age.

C. Prohibitions. (1) **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

(2) **Jury Selection.** Media coverage of jury selection is prohibited.

(3) **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

(4) **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

(5) **Juvenile Court Proceedings.** In juvenile court proceedings, if the court receives a request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the accused, the parties, and the witnesses of their personal right to object, and that if consent is given, it must be in writing. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the accused in a criminal case or any party to a civil action will prohibit media coverage of the entire proceeding.

(6) **Conferences of Counsel.** There shall be no audio pickup, recording, broadcast, or video closeup of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

D. Limitations. (1) **Discretion of Presiding Judge.** The presiding judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding judge’s discretion shall be made following the procedures established in section D(2).

(2) **Evidentiary Hearing.** Before denying, limiting, suspending, or terminating media coverage, the presiding judge shall hold an evidentiary hearing, if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section D(1) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

E. Appellate Review. Appellate review of a presiding judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

F. Equipment and Personnel. (1) **Limitations.** At least one, but no more than two television cameras with one operator each, two still photographers using not more than two cameras each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding.

(2) **Pooling Arrangements.** When more than one request for media coverage is made, the media shall select a representative to serve as a liaison and be responsible for arranging "pooling" among the media that may be required by these limitations on equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(3) **Personal Recorders.** Media personnel may use hand-held cassette tape recorders that are no more sensitive than the human ear without complying with section (A)(2) of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast. Usage shall not be obtrusive or distracting, and no change of tape shall be made during court sessions.

(4) **Print Media.** This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera or electronic equipment.

G. Sound and Light Criteria. (1) **Distractions.** Only television, photographic and audio equipment which does not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

(2) **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding judge, and without public expense.

(3) **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from a television camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of

any proceeding by the presiding judge.

(4) **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

H. Location of Equipment and Conduct of Media Personnel. (1)

Location of Equipment and Personnel. The presiding judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

(2) **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding judge. Expenses for alterations shall be borne by the media.

(3) **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment which disrupts or distracts from the proceeding. Media broadcast, photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

(4) **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not detract from the proceeding.

I. Impermissible Use of Media Material. None of the film, videotape, still photographs, or audio recordings of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

J. Ceremonial Proceedings. This rule shall not limit media coverage of investiture, ceremonial, or nonjudicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding judge.

K. Compliance. Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding judge. [Adopted by order entered December 14, 1995; amended by order entered December 30, 1996; amended by order entered December 6, 1999.]

Compiler's Notes. In its order filed March 13, 2015, the Supreme Court provided that: "Rule 30, Rules of the Tennessee Supreme Court, governs media coverage of court proceedings. Because of changes in technology and modes of media coverage, the Court is considering amendments that would update the rule in light of those changes. The proposed amendments are set out in the attached appendix.

"The Appendix to this order sets out the proposed amendments to Rule 30(B), (F), (G) (H), and (I). The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties concerning the proposed amendments. The deadline for submitting written comments is Tuesday, May 12, 2015. Writ-

ten comments should be addressed to: James Hivner, Clerk, Re: Rule 30, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407, and should include the docket number [ADMIN2015-00451]."

The proposed amendment to Rule 30(B), (F), (G) (H), and (I) promulgated by the Supreme Court in its order dated March 13, 2015, would rewrite 30(B)(1) to read: " (1) "Coverage" means any recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, or any other electronic device. "Coverage" also means media personnel's posting on an internet website, communicating via social media, text messaging, or otherwise communicating via an electronic device about a

court proceeding from inside the courtroom while court is in session. This definition of “coverage” is subject to the prohibitions listed in section C.”; would add 30(B)(6) which would read: “(6) “Electronic Device” means any device capable of capturing, recording, and/or transmitting video images, still images, or audio of a court proceeding and any device capable of transmitting real-time textual descriptions of a court proceeding. Electronic devices include, without limitation: film, digital, video, and any other type of cameras; cellular telephones; tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers; electronic tablets; and any other similar technological device with the ability to capture, record and/or transmit video or still images, audio, text, or other electronic communication data.”; 30(F)(1) would be rewritten to read: “(1) Limitations. No more than two television cameras with one photographer each, will be permitted in any judicial proceeding. No more than two non-television photographers using not more than two cameras or other electronic devices each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding. The use of any electronic device for other coverage of a proceeding is limited to two devices per media representative.”; in 30(F)(3), “audio recorders” would be substituted for “casette tape recorders” in the first sentence, “or other audio transmission” would be added to

the end of the second sentence and “or other electronic storage medium” would be inserted into the third sentence following “change of tape”; 30(F)(4) would be rewritten to read: “(4) Other Coverage. This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera, audio equipment, or other electronic device.”; 30(G) would be retitled from “Sound and Light Criteria” to “Equipment Criteria”; the first sentence of 30(G)(1) would be rewritten to read: “Only television, photographic and audio equipment and other electronic devices that do not produce distracting sound or light shall be employed to cover proceedings in a court facility.”; in the first sentence of 30(G)(3), “an electronic device’s” would be substituted for “a television camera’s”; in the first sentence of 30(H)(3), “any equipment or electronic devices that” would be substituted for “any equipment which”; and in 30(I), “video or still images,” would be substituted for “videotape, still photographs, or” and “, or other electronic coverage” would be inserted following “audio recordings”.

In its order filed May 1, 2015, the Court has extended the deadline for submitting written comments on the revisions to Supreme Court Rule 30 proposed by the Court’s order filed March 13, 2015, from May 12, 2015, to August 14, 2015.

Law Reviews. Court amends media coverage rule, 36 No. 3 Tenn. B.J. 6 (2000).

NOTES TO DECISIONS

ANALYSIS

1. Limiting Media Coverage.
2. Print Coverage.

1. Limiting Media Coverage.

Defendant failed to show that media coverage of the jury selection process was disruptive, biased any juror, impinged on her right to a fair trial or that exclusion of cameras from the courtroom would have reduced media coverage of the crime. *State v. Pike*, 978 S.W.2d 904, 1998 Tenn. LEXIS 545 (Tenn. 1998), rehearing de-

nied, *State v. Pike*, — S.W.3d—, 1998 Tenn. LEXIS 704 (Tenn. 1998), cert. denied, *Pike v. Tennessee*, 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3718 (1999).

2. Print Coverage.

Tenn. Sup. Ct. R. 30 does not apply to print coverage; therefore, in a per curiam decision, newspaper publishing company’s request for access to jury selection proceedings was granted because request did not seek to record, photograph, or broadcast the proceedings. *King v. Jowers*, 12 S.W.3d 410, 1999 Tenn. LEXIS 652 (Tenn. 1999).

Rule 31. Alternative Dispute Resolution — Mediation.

Compiler’s Notes. In its order dated March 14, 2018, the Supreme Court provided that: “On March 9, 2018, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition seeking to adopt amendments to Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and seeking to adopt a new Supreme Court Rule 31A. The petition asserts that the amendments are needed to divide Supreme Court Rule 31 into Rule 31 and Rule 31A; to redefine and clarify the eligible civil actions encom-

passed by Rule 31; to establish grievance procedures; to clarify matters related to confidentiality, privilege, and admissibility; to clarify the obligations of Rule 31 mediators; to modify and clarify the training and listing requirements for mediators; to propose additional duties for mediators; and to remove appendices B-E from Rule 31. The petition and proposed amendments are attached as an appendix to this Order. The Court hereby solicits written comments from judges, lawyers, bar associa-

tions, members of the public, and any other interested parties. The deadline for submitting written comments is June 12, 2018. Written comments should reference the docket number set out above and may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to: James M. Hivner, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-14.”

In its order dated October 3, 2018, the Supreme Court provided that: “On March 9, 2018, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition seeking to adopt amendments to Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and seeking to adopt a new Supreme Court Rule 31A. The petition asserts that the amendments are needed to divide Supreme Court Rule 31 into Rule 31 and Rule 31A; to redefine and clarify the eligible civil actions encompassed by Rule 31; to establish grievance procedures; to clarify matters related to confidentiality, privilege, and admissibility; to clarify the obligations of Rule 31 mediators; to modify and clarify the training and listing requirements for mediators; to propose additional duties for mediators; and to remove appendices B-E from Rule 31.

“In response to the petition, the Court received and reviewed responses from the ADRC, the Tennessee Bar Association, the Knoxville Bar Association, the Chattanooga Bar Association,

the Nashville Bar Association, the Tennessee Board of Professional Responsibility, University of Tennessee Law Professor Becky Jacobs, and numerous mediation centers and individuals. The Court expresses its appreciation for all of the responses. After due consideration, the Court hereby amends Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and adopts Tennessee Supreme Court Rule 31A in the form attached to this Order.

“The effective date of the revisions to Rule 31, Appendix A of Rule 31, and Rule 31A, with the exception of Rule 31, sections 14(2) and 15(a)(4), shall be November 1, 2018.

“The effective date of the revisions to Rule 31, sections 14(2) and 15(a)(4) shall be November 1, 2019. This effective date will allow Rule 31 Mediators who are currently on inactive status sufficient time to change their status to active if they choose to do so. Otherwise, as of November 1, 2019, the listing for Rule 31 Mediators on inactive status will lapse and mediators who are on inactive status will have to reapply to become Rule 10/03/2018 31 Listed Mediators. In addition, the amendment from a fifteen-year training validity to a six-year training validity will be effective November 1, 2019, to allow anyone who completed a Rule 31 training within fifteen years to apply before the amendment of a six-year training validity becomes effective. See Tenn. Sup. Ct. R. 31, sections 14(2) and 15(a)(4).”

GENERAL PROVISIONS

Section 1. Application. The standards and procedures adopted under this Rule apply only to Rule 31 Meditations and Rule 31 Mediators serving pursuant to this Rule. The standards and procedures do not affect or address the general practice of mediation or alternative dispute resolution in the private sector outside the ambit of Rule 31. Pursuant to the provisions of this Rule, a Court may order the parties in an Eligible Civil Action, as defined in Section 2(f), to participate in a Rule 31 Mediation.

Section 2. Definitions.

(a) “Alternative Dispute Resolution Commission” or “ADRC” is the Alternative Dispute Commission established by the Supreme Court pursuant to this Rule.

(b) “Baccalaureate degree” and “graduate degree” are only those degrees awarded by an institution of higher education accredited by an agency recognized by the Council for Higher Education and approved or listed by the United States Department of Education as a recognized accrediting agency. A Juris Doctor Degree degree from either: (a) a law school accredited by the American Bar Association or (2) a Tennessee law school approved by the Tennessee Board of Law Examiners pursuant to Tennessee Supreme Court 7 shall be deemed a graduate degree under this Rule. A law degree earned outside the United States shall be evaluated on a case by case basis by the ADRC based on the provision of Tennessee Supreme Court Rule 7.01.

(c) “Court” means any court exercising civil jurisdiction subject to the Tennessee Supreme Court Rules.

(d) "Court Ordered Mediation" is a Rule 31 Mediation in which there is an Order of Reference from a Court or Judicial Officer.

(e) "Days," for purposes of the deadlines imposed by this Rule, means calendar days.

(f) "Eligible Civil Action" includes any civil action filed in a Court in which the Court has continuing jurisdiction, except civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile delinquency cases. The term "Extraordinary writs" does not encompass claims or applications for injunctive relief.

(g) "Judicial Officer" serves by election or continuing appointment in a judicial office, such as: 1) a sitting judge in a Court; or 2) a Juvenile Referee, Divorce Referee, Referee, and Special Master.

(h) "Order of Reference" is a written or standing order of a Court or Judicial Officer entered in or related to an Eligible Civil Action in accordance with Section 3 herein directing the parties to participate in a Rule 31 Mediation.

(i) A "Rule 31 Mediation" is an informal process in which a Rule 31 Mediator conducts discussions among the parties that is designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of disputed issues: 1) in or related to an Eligible Civil Action; or 2) in any civil dispute in which the Rule 31 Mediator and the parties have agreed in writing that the mediation will be conducted pursuant to Rule 31.

(j) A "Rule 31 Mediator" is any person listed by the ADRC as a mediator pursuant to Section 14 of this Rule, who has complied with all applicable renewal listing and continuing education requirements and is approved by the ADRC to conduct Court-Ordered Mediations.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 MEDIATIONS

Section 3. Initiation/Order of Reference.

(a) Rule 31 Mediation may be initiated by the consent of the parties or by the entry of an Order of Reference.

(b) Upon motion of either party, or upon its own initiative, a Court by Order of Reference may order the parties in an Eligible Civil Action to participate in a Rule 31 Mediation.

(c) Any Order of Reference made on the Court's own initiative shall be subject to review on motion by any party and shall be vacated should the Court determine in its sound discretion that the referred case is not appropriate for Rule 31 Mediation or is not likely to benefit from submission to Rule 31 Mediation. Pending disposition of any such motion, the Rule 31 Mediation shall be stayed without the need for a court order.

(d) All Rule 31 Mediations shall be concluded as efficiently and expeditiously as possible given the circumstances of the case.

Section 4. Selection of Rule 31 Mediators.

(a) Within 15 days of the date of an Order of Reference, the parties must notify the Court of the Rule 31 Mediator(s) agreed to by the parties or their inability to agree on a Rule 31 Mediator(s).

(b) When the parties cannot agree on the selection of a Rule 31 Mediator(s), the Court shall nominate a Rule 31 Mediator(s) in accordance with the

following procedure:

(1) In a Rule 31 Mediation in which a single Rule 31 Mediator will serve, the Court shall designate three Rule 31 Mediators from a list of mediators maintained by the Program Manager of the Administrative Office of the Courts, as referenced in Section 4(d).

(2) In a Rule 31 Mediation in which more than one Rule 31 Mediator will serve, the Court shall designate three Rule 31 Mediators from a list of mediators maintained by the Program Manager of the Administrative Office of the Courts, as referenced in Section 4(d), for each seat on the panel and one additional Rule 31 Mediator for each seat on the panel for each additional party over two.

(3) After receiving the Court's nominations, each party shall strike one name from the Court's list for each Rule 31 Mediator being selected. The Court shall appoint the remaining Rule 31 Mediator(s) unless a valid and timely objection is made and within 10 days of the Court's appointment. In the event the objection is upheld or if a designated Rule 31 Mediator otherwise cannot serve, the process under this section will be repeated to the extent necessary.

(4) The Court's nomination of any Rule 31 Mediators shall be by random selection unless the matter requires particular expertise not possessed by all Rule 31 Mediators.

(c) If a Rule 31 Mediation is conducted by consent of the parties without an Order of Reference, the parties shall choose the Rule 31 Mediator.

(d) The Programs Manager of the Administrative Office of the Courts shall maintain and make available to the public by posting on the AOC website a list of Rule 31 Mediators listed by the ADRC, the date of their approval, their occupation, and contact information.

Section 5. Reports in Rule 31 Mediations Conducted in Eligible Civil Actions. At the conclusion of a Rule 31 Mediation, the Rule 31 Mediator shall submit a final report to the Court by filing same with the clerk of the court. The final report shall state only: (i) which parties appeared and participated in the Rule 31 Mediation; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Mediator requests that the costs of the Rule 31 Mediator's services be charged as court costs. The report shall be submitted within the time specified by the Court in the Order of Reference. In the event there is no Order of Reference or the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the conclusion of the Rule 31 Mediation or within the time period specified by the Court.

Section 6. Participation of Attorneys. Attorneys may participate with their clients during Rule 31 Mediations.

Section 7. Confidential and Inadmissible Evidence. Evidence of conduct, information disclosed, or any statement made in the course of a Rule 31 Mediation is confidential to the extent agreed by the parties or provided by other law or rule of this State. Such evidence shall be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408. No Rule 31 Mediator may be compelled to testify by deposition or otherwise regarding such conduct, information, or statements. A written mediated agreement signed by the parties is admissible to enforce the understanding of the parties.

Section 8. Costs.

(a) The costs of any Rule 31 Mediation, including the costs of the services of the Rule 31 Mediator(s) may, at the request of the Rule 31 Mediator(s), be charged as court costs. The request to charge the cost of the services of the Rule 31 Mediator(s) should be submitted to the Court by filing same with the clerk of the court. If the parties appeal to the appellate court(s), the parties may advise the appellate court in their briefs whether the Rule 31 Mediator(s) requested that the cost of the Rule 31 Mediator's services be included in the court costs.

(b) The Court may, in its sound discretion, waive or reduce the costs of a Rule 31 Mediation.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 MEDIATORS**Section 9. Standards of Professional Conduct for Rule 31 Mediators.**

(a) Rule 31 Mediators shall avoid the appearance of impropriety.

(b) Rule 31 Mediators shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31 Mediations, including but not limited to the Standards of Professional Conduct for Covered Neutrals attached as Appendix A hereto. Under Tenn. Sup. Ct. R. 8, RPC 2.4(c)(9), violation of any of these rules and procedures by any Rule 31 Mediator who is an attorney constitutes a violation of the Rules of Professional Conduct.

(c) The Standards of Professional Conduct for Covered Neutrals attached as Appendix A are incorporated into this Rule.

(d) **Ethics Advisory Opinion Committee.** (1) The Ethics Advisory Opinion Committee ("the Committee") shall provide written advisory opinions to Rule 31 Mediators and alternative dispute resolution organizations in response to ethical questions arising from Rule 31 and the Standards of Professional Conduct for Covered Neutrals.

(2) The Ethics Advisory Opinion Committee shall be composed of three members of the ADRC, one from each Grand Division, appointed on a rotating basis by the Chair if the ADRC when a request for an opinion is received and reviewed by the Programs Manager. The Chair may also appoint a committee, from time to time, to issue advisory opinions regarding issues of concern to the Commission.

(3) All requests for advisory opinions shall be in writing and shall be submitted to the Programs Manager.

(4) The Committee shall meet in person or by telephone conference as necessary to consider the request for an advisory opinion. Upon due deliberation, and upon the concurrence of a majority of the Committee, the Committee shall issue an opinion. The opinion shall be signed by each member of the Committee and filed with the Programs Manager. The opinion shall be made available to the public through the AOC website, the ADR News, and upon written request to the Programs Manager.

(5) Prior to publication, all identifying references to the requesting Rule 31 Mediator or the names of any persons, firms, organizations, or corporations shall be deleted from any request for an opinion, any document associated with

the preparation of an opinion, and any opinion issued by the Committee.

(6) Reliance by a Rule 31 Mediator on an opinion of the Committee shall not constitute a defense in any disciplinary proceeding; such reliance, however, shall be evidence of good faith and may be considered by the ADRC in relation to any determination of guilt or in mitigation of punishment. If the requesting Rule 31 Mediator later is brought before the Grievance Committee on allegations of misconduct for which the Rule 31 Mediator requested and received an opinion, the ADRC members who served on the Ethics Advisory Opinion Committee shall be precluded from participating in the grievance procedure.

Section 10. Obligations of Rule 31 Mediators.

(a) Before the commencement of any Rule 31 Mediation, the Rule 31 Mediator shall:

(1) Make a full and written disclosure of any known relationships with the parties or their counsel which may affect or give an appearance of affecting the Rule 31 Mediator's neutrality.

(2) Advise the parties regarding the Rule 31 Mediator's qualifications and experience.

(3) Discuss with the parties the rules and procedures that will be followed in the Rule 31 Mediation.

(b) During Rule 31 Mediations, the Rule 31 Mediator shall:

(1) Advise the Court in which the proceeding is pending if the Rule 31 Mediation is, or is likely to become, inappropriate, unfair, or detrimental in the referred action.

(2) Maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(3) Refrain from giving legal advice, while serving as a Rule 31 Mediator, to the parties in the Rule 31 Mediation. However, while a Rule 31 Mediator should not offer a firm opinion as to how the Court in which a case has been filed will resolve the case, a Rule 31 Mediator may point out possible outcomes of the case and may indicate a personal view of the persuasiveness of a particular claim or defense.

(c) During and following Rule 31 Mediations, Rule 31 Mediators shall:

(1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master, or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31 Mediation was conducted.

(2) Provide a timely report as required under Section 5 of this Rule.

(3) Avoid any appearance of impropriety in the Rule 31 Mediator's relationship with any member of the judiciary or the judiciary's staff with regard to the Rule 31 Mediation or the results of the Rule 31 Mediation.

(4) Preserve and maintain the confidentiality of all information obtained during the Rule 31 Mediation and shall not divulge information obtained by the Rule Mediator during the course of the Rule 31 Mediation without the consent of the parties, except as otherwise may be required by law.

(5) Assist the parties in memorializing the terms of the agreement of the parties at the end of the mediation. Rule 31 Mediators may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct.

R. 52 and any other forms approved under Tenn. Sup. Ct. R. 52 for use by self-represented parties in memorializing their agreement.

(d) The Rule 31 Mediator shall not be called as a witness in any proceeding to enforce any terms of the resulting mediation agreement.

Section 11. Proceedings for Discipline of Rule 31 Mediators.

(a) **Initiation of Complaint.** (1) Any individual who participated in a Rule 31 Mediation may file a complaint alleging a violation of or failure to comply with the provisions of this Rule or any standard promulgated under this Rule against the Rule 31 Mediator(s) who conducted the Rule 31 Mediation.

(2) Any complaint against a Rule 31 Mediator must be received by the Programs Manager of the Administrative Office of the Courts no later than 180 days after the date of the final mediation session or alleged violation of a provision of this Rule or any standard promulgated under this Rule.

(3) The complainant shall submit a sworn complaint to the Programs Manager using a complaint form promulgated by the ADRC and posted on the AOC website.

(4) Any complaint that is not sworn or is received later than 180 days after the date of the final mediation or alleged violation will not be accepted and the complainant will be barred from pursuing the complaint with the ADRC. This statute of limitations only applies to the ADRC's exercise of its own procedures contained within this Rule.

(b) **Processing of Complaint.** (1) Once a Complaint has been received, the Programs Manager shall, within a reasonable period of time, forward the complaint to the ADRC Chair.

(2) Within a reasonable time after receiving the complaint form the Programs Manager, the ADRC Chair shall appoint a Grievance Committee consisting of three ADRC members, and, when possible, form the Grand Division in which the alleged act or failure to act giving rise to the allegations contained in the complaint took place. If the complaint is against an ADRC member, the Grievance Committee shall consist of three non-ADRC members appointed by the Supreme Court.

(3) The Grievance Committee shall, within a reasonable period of time, review the complaint and make a facial sufficiency determination as to whether the allegations contained in the complaint, if taken as true, may constitute a violation of Rule 31 or any standard promulgated under Rule 31.

(4) If the Grievance Committee finds that the conduct that is the subject of the complaint does not constitute a violation of Rule 31 or any standard promulgated under Rule 31, the Grievance Committee shall dismiss the complaint without prejudice and the Programs Manager shall notify the complainant and the Rule 31 Mediator of the dismissal.

(c) **Process if Grievance Committee Determines Facial Sufficiency of Complaint.** (1) If the Grievance Committee determines that the allegations, if taken as true, may constitute a violation of Rule 31 or any standard promulgated under Rule 31, the Committee shall prepare a list of any rule(s) or standard(s) which the Rule 31 Mediator may have violated. The Programs Manager shall send a copy of the complaint, the list of alleged Rule violations and a copy of Rule 31 to the Rule 31 Mediator named in the complaint. Service shall be made by mailing a copy of the document to be served to such person's

last known address. Service by mail is complete upon mailing.

Service may also be made by sending him or her the document in Adobe PDF format to the Rule 31 Mediator's last known email address as maintained under Section 15 or which shall be promptly furnished on request. A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under Section 11.

(2) The Rule 31 Mediator shall send a written response to the Programs Manager by postal mail and electronic mail and the AOC must receive the response within 30 days of the posting in (c)(1). If the Rule 31 Mediator fails to timely respond to the allegations, the grievance shall be deemed admitted, and the Grievance Committee may, within 10 days, recommend sanctions per subsection (d)(2)(v).

(3) Within 10 days of receipt of the Rule 31 Mediator's response, the Programs Manager shall forward a copy of the Rule 31 Mediator's response to the complainant by postal mail and may also forward a copy by electronic mail. Within 30 days of posting of the Rule 31 Mediator's response, the complainant shall send a written response to the Rule 31 Mediator's response to the Programs Manager by postal mail and electronic mail. The AOC must receive the complainant's counterresponse within 30 days of the Programs Manager's posting of the Rule 31 Mediator's response.

(4) Within 10 days of receipt of all responses, the Programs Manager shall forward all responses received to the Grievance Committee.

(5) Notwithstanding any other provision in this Rule, at any time while the Grievance Committee has jurisdiction, it or its designated chair may meet with the complainant and the Rule 31 Mediator, jointly or separately, in an effort to resolve the matter. These meetings may be in person, by video-conference, or by teleconference at the discretion of the Committee. Any resolution may include sanctions if agreed to by the Rule 31 Mediator. If the Rule 31 Mediator agrees to sanctions and a resolution is reached, a stipulation of dismissal signed by the complainant and the Rule 31 Mediator with the concurrence of the Grievance Committee shall be submitted to the ADRC Chair and the complaint shall be dismissed with prejudice. At any time, the Grievance Committee may accept an admission by the Rule 31 Mediator and impose sanctions determined by the Committee per subsection (d)(2)(v).

(6) If there is no resolution per subsection (c)(5), the Grievance Committee shall review the complaint, the Rule 31 Mediator's response, the complainant's counter-response, and the result of any investigation directed by the Committee Chair, including any documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and constituted a violation of this Rule or any standard promulgated under Rule 31. If there is no probable cause, the Committee shall dismiss the complaint in a written decision and said decision shall be final with no right to an appeal. The Programs Manager shall forward a copy of the decision to the complainant and the Rule 31 Mediator.

(d) Process if Grievance Committee Determines Probable Cause.

Upon a finding of probable cause, the Grievance Committee may:

(1) Without a hearing, determine by clear and convincing evidence that a violation has occurred and issue a written decision including a statement

noting the provisions of this Rule or any standard promulgated under Rule 31 that the Rule 31 Mediator failed to comply with and the Grievance Committee's reasons for not proceeding to a hearing on the matter. In its decision, the Grievance Committee shall impose appropriate sanctions per subsection (d)(2)(v). The Programs Manager will send this written decision to the Rule 31 Mediator and the complainant; or

(2) Hold a hearing within 30 days as soon thereafter as all parties, Grievance Committee members and witnesses are available for a hearing, on a date and at a location to be determined by the Grievance Committee.

(i) Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery and for the appearance of any person before the Grievance Committee, may be issued by the chair of the Committee or the ADRC. Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

(ii) Any person who, without adequate justification, fails to obey a duly served subpoena may be cited for contempt of the Grievance Committee or ADRC. Should any witness fail, without justification, to respond to the lawful subpoena of the Committee or ADRC, or having responded, fail or refuse to answer all inquiries or produce evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding, the Chair of the Grievance Committee or ADRC may cause a petition to be filed before the circuit court of the county in which the contemptuous act was committed. The petition shall allege the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt of the Grievance Committee or ADRC. Such petition shall pray for the issuance of an order to show cause before the circuit court why the circuit court should not find the person in contempt of the Grievance Committee or ADRC and why the person should not be punished by the court therefore. The circuit court shall issue such orders and judgments therein as the court deems appropriate.

(iii) Hearings by the Grievance Committee may be conducted informally, but shall be conducted pursuant to the Tennessee Rules of Evidence that may be liberally construed. Witnesses shall testify under oath. Proceedings may be reported by a court reporter, and the cost of the same shall be paid by the party requesting the reporting.

(iv) The complainant shall have the burden of proving all allegations by clear and convincing evidence.

(v) If, after the hearing, the Committee finds clear and convincing evidence that the Rule 31 Mediator has violated Rule 31 or any standard promulgated under Rule 31 and that such violation warrants a sanction(s), the Committee shall impose an appropriate sanction(s), including but not limited to, private admonition, a public reprimand, additional training, suspension, and/or disqualification. The Committee shall issue a written opinion containing its findings of fact and conclusions. The Programs Manager will forward a copy of the decision to the complainant and the Rule 31 Mediator.

(e) **Appeal of Grievance Committee Decision.** (1) Any party who desires to obtain a review of the decision of the Grievance Committee rendered either pursuant to subsection (c)(2), (d)(1), or following a hearing held

pursuant to subsection (d)(2), may appeal to the full ADRC (excluding those members who served on the Grievance Committee that initially heard the complaint) by filing a written notice of appeal with the ADRC through the Programs Manager, within 30 days following the Committee's decision.

(2) If the parties agree to limit the issues to be presented for review, the ADRC may choose to accept those limitations. The full record of the subject disciplinary process, including the findings of the Grievance Committee, shall be made available to the ADRC during the review process.

(i) Content of the Record.

The record on appeal shall consist of: (A) copies of all papers filed with the Program Manager; (B) the original of any exhibits offered; (C) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected; and (D) an other matter designated by a party and properly includable in the record.

(ii) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings.

Except as provided in (iii) of Section 11(e)(2), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the Grievance Committee Hearing is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the Programs Manager and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the Programs Manager and serve on the appellant a designation of additional parts to be included. The appellant shall have the additional parts prepared at the appellant's own expense. The transcript certified by the appellant or the reporter as an accurate account of the proceedings, shall be filed with the Programs Manager within 60 days after filing the notice of appeal. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the Programs Manager with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the Programs Manager within 15 days after service of notice of the filing of the transcript.

(iii) Statement of the Evidence When No Report, Recital, or Transcript Is Available.

If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the appellant determines that the cost to obtain the stenographic report in the matter is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall re are a

statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant as an accurate account of the proceedings, shall be filed with the Programs Manager within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the Programs Manager with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the Programs Manager within 15 days after service of the declaration and notice of the filing of the statement.

(3) An appealing party shall submit a brief describing the issues and matters for which the appealing party seeks a ruling and decision of the ADRC. This shall be submitted to the ADRC via the Programs Manager, within 45 days after filing a written notice of appeal with the ADRC. The brief shall be served on the other party by the appealing party.

(4) The appellee shall submit a responsive brief to the ADRC via the Programs Manager, within 30 days after the receipt of the appealing party's brief and serve a copy on the other party.

(5) Within 10 days of receipt of all briefs, the Programs Manager shall forward copies of all briefs to the ADRC members.

(6) The ADRC, without those members who served on the Grievance Committee and initially heard the complaint, will hear the appeal within a reasonable time. The standard of review shall be de novo on the record with no presumption of correctness. The appellate review shall be set as soon as reasonably possible.

(7) Sections 11(c)(5) and (d)(2)(iv-v) of the Rule shall also apply to the hearings of the ADRC.

(8) The ADRC will hear and determine the complaint and then issue a written decision as to whether the complainant has shown by clear and convincing evidence that the Rule 31 Mediator violated Rule 31 or any standard promulgated under Rule 31. If the ADRC determines that Rule 31 or any standard promulgated under Rule 31 was violated, the ADRC shall impose appropriate sanctions, including a private admonition, a public reprimand, additional training, suspension, and/or disqualification. The decision of the ADRC is final and there is no right to an appeal.

(f) **General Provisions.** (1) A Rule 31 Mediator's failure to comply with sanctions imposed under this Section may, at the option of the ADRC, result in additional sanctions, including but not limited to loss of credentials, or the filing of a petition for contempt per the process set forth in subsection (d)(2)(ii).

(2) All matters, investigations, or proceedings involving allegations of misconduct by a Rule 31 Mediator, including all hearings and all information, records, minutes, files or other documents of the ADRC, the Grievance Committee, and AOC staff shall be confidential and privileged, and shall not be public records nor subject to disclosure, until or unless:

(i) a recommendation for the imposition of public discipline, without the

initiation of a hearing, is filed with the ADRC by the Grievance Committee; or

- (ii) the Rule 31 Mediator requests that the matter be public; or
- (iii) the complaint is predicated upon conviction of the Rule 31 Mediator for a crime.

(3) All work product and work files (including internal memoranda, correspondence, notes and similar documents and files) of the ADRC, Grievance Committee, and staff shall be confidential and privileged.

(4) All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality.

(5) The confidentiality of a mediation is deemed waived by the parties to the extent necessary to allow the complainant to fully present his or her case and to allow the Rule 31 Mediator to fully respond to the complaint. The waiver relates only to information necessary to deal with the complaint. The ADRC, the Grievance Committee, and staff will be sensitive to the need to protect the privacy of all parties to the mediation to the fullest extent possible commensurate with fairness to the Rule 31 Mediator and protection of the public.

(6) Once the Grievance Committee has issued an opinion, a synopsis of the case may be published in the ADRC quarterly newsletter and on the AOC website. The name of the complainant will not be included in the synopsis. If the Rule 31 Mediator is not publicly sanctioned, the name of the Rule 31 Mediator will not be included in the synopsis.

(7) Members of the Grievance Committee, the ADRC and AOC staff shall be immune from civil suit for any conduct in the course of their official duties.

(8) Notwithstanding an other provision of this Rule, if a grievance results in a finding whether by admission or by decision of the Grievance Committee or the ADRC, that a Rule 31 Mediator who is also an attorney violated Rule 31 or any standard promulgated under Rule 31, and once any rights of appeal have been exhausted or have expired, the ADRC shall report the finding to the Board of Professional Responsibility of the Supreme Court of Tennessee.

Compiler's Notes. In subdivision (c)(3) the publisher substituted "Manager" for "Manger" to correct original text.

Section 12. Privilege and Immunity. Activity of Rule 31 Mediators in the course of Rule 31 Mediations shall be deemed to be privileged and the performance of a judicial function and for such acts Rule 31 Mediators shall be entitled to judicial immunity.

Section 13. Compensation. Rule 31 Mediators are entitled to be compensated at a reasonable rate for participation in Court-Ordered Mediations, except pro bono proceedings pursuant to Section 15 of this Rule.

PROVISIONS REGARDING QUALIFICATIONS AND TRAINING OF RULE 31 MEDIATORS

Section 14. Rule 31 Mediators. No person shall act as a Rule 31 Mediator without first being listed by the ADRC. To be listed, an applicant must:

- (1) submit an application and pay application fees set by the ADRC;

(2) comply with the qualification and training requirements set forth in this section. All training must have been approved by the ADRC as set forth in subsection (f) and must have been completed within the five years immediately preceding the application seeking Rule 31 Mediator listing.

(3) certify in writing an intention to comply with the conditions and obligations imposed by Rule 31, including those requirements related to pro bono obligations;

(4) submit two character references evidencing good character and suitability for the practice of mediation;

(5) disclose convictions for any felony or for a misdemeanor involving violence, dishonesty or false statement if such conviction is ten years old or less as provided in Tennessee Rule of Evidence 609;

(6) If the applicant's profession requires licensing, the applicant shall also provide documentation that the applicant is in good standing or possesses a valid license with the Board or Agency charged with issuing licenses to practice in the applicant's profession. Failure to pay board or agency dues when there is no intent by the applicant to practice in the licensed occupation or profession in the jurisdiction of licensure shall not constitute a lack of good standing for purposes of Rule 31;

(7) If the applicant has held a professional standing which requires licensing, the applicant shall also provide documentation of the applicant's complete disciplinary history including closed and open grievances for each license the applicant has held. The applicant must not have a disciplinary history with the Board or Agency charged with issuing licenses to practice in any such profession that would demonstrate an unsuitability for the practice of mediation. If the applicant has been licensed at one time and is no longer licensed in his/her occupation or profession due to disciplinary reasons, the applicant will not be approved for listing and may reapply when his/her license has been restored.

(a) **Rule 31 Mediators in General Civil Cases.** (1) To be listed by the ADRC as a Rule 31 Mediator in general civil cases, one must also:

(i) meet one of the following education/work experience requirements:

(A) have a graduate degree plus four years of full time work experience. Full time practical work experience shall be defined as 35 hours or more of work per week.

(B) have a baccalaureate degree plus six years of full time work experience. Full time work experience shall be defined as 35 hours or more of work per week.

and

(ii) complete and provide proof of attendance of 40 hours of general mediation training which includes the curriculum components specified by the ADRC for Rule 31 Mediators in general civil cases.

(b) **Rule 31 Mediators in Family Cases.** (1) To be listed as a Rule 31 Mediator in family cases, one must also:

(i) meet one of the following education/work experience requirements:

(A) have a baccalaureate degree with ten years full time work experience in psychiatry, psychology, counseling, family mediation, social work, education, law, or accounting. Full time work experience shall be defined as

35 hours or more of work per week.

(B) be a Certified Public Accountant and have four years of full time work experience in psychiatry, psychology, counseling, social work, education, law, or accounting. Full time work experience shall be defined as 35 hours or more of work per week.

(C) have a graduate degree and have four years of full time work experience in psychiatry, psychology, counseling, social work, education, law, or accounting. Full time work experience shall be defined as 35 hours or more of work per week.

(ii) complete and provide proof of attendance of 40 hours of training in family mediation which includes the curriculum components specified by the ADRC for Rule 31 Mediators in family cases and which also includes four hours of training in screening for and dealing with domestic violence in the mediation context; and

(iii) complete and provide proof of attendance of six additional hours of training in Tennessee family law and court procedure. It is provided, however, that the ADRC may approve fulfillment of this requirement for applicants who have substantially complied with completion of at least six hours of ADRC-approved training devoted to Tennessee family law and/or procedure within the three-year period immediately prior to the completion of the requirements of Section 14(c)(1)(i) through (xii) of this Rule.

(c) **Content of Training Programs for Rule 31 Mediators.** (1) Before being listed either as Rule 31 General Civil Mediators or as Rule 31 Family Mediators, applicants shall complete a course of training consisting of not less than 40 hours, including the following subjects:

- (i) Rule 31 and procedures and standards adopted thereunder;
- (ii) conflict resolution concepts;
- (iii) negotiation dynamics;
- (iv) court process;
- (v) mediation process and techniques;
- (vi) communication skills;
- (vii) standards of conduct and ethics for Rule 31 Neutrals;
- (viii) community resources and referral process;
- (ix) cultural and personal background factors;
- (x) attorneys and mediation;
- (xi) the self-represented party and mediation; and
- (xii) confidentiality requirements, and any exceptions thereto as required by law.

(d) **Waiver of Training Requirements for Certain Rule 31 Mediators.** (1) Upon petition to and acceptance by the ADRC, the following persons may be qualified as Rule 31 Mediators without first complying with training requirements set forth in Section 14(a), (b), or (c) of this Rule if they satisfy the work experience requirements as noted in this section:

(i) persons holding graduate degrees who have passed a mediation course which awards at least three semester hours credit and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and that the mediation course has been completed within the five years immediately preceding the application seeking Rule 31

Mediator listing;

(ii) trained mediators who comply with the qualifications set forth for Rule 31 Mediators in general civil cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the assistance of the AOC Programs Manager, provided that their training be the substantial equivalent of that required under this Rule and that the training has been completed within five years prior to the application;

(iii) if a trained mediator has complied with the qualifications for approval as a mediator by another state and such approval has been granted, and if the mediator is in good standing in such state at the time of the application for approval in Tennessee, the ADRC may, upon review of the qualifications of the applicant, waive such training requirements as required by Section 14 of this Rule; and

(iv) alternative dispute resolution professors at accredited law schools or graduate schools who have taught a mediation course which awards at least three semester hours of credit for at least two semesters and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and that the applicant has taught the mediation course within the five years immediately preceding the application seeking Rule 31 Mediator listing.

(2) Applicants for qualification as a Rule 31 Mediator under this subsection will be assessed an additional application fee for this review of their applications by the ADRC.

(e) **Procedure for Dual-Listing Rule 31 Mediators.** The ADRC may dually list an individual listed as a Family Mediator or as a General Civil Mediator if that individual has met the requirements of Section 14(a), (b) or (c) of this Rule and has obtained such additional training in general civil or family mediation as in the judgment and discretion of the ADRC qualifies that individual to be dually listed as a General Civil Mediator and as a Family Mediator.

Completion of an ADRC-approved 24-hour Civil to Family Cross-Over Training will satisfy the training requirement for listed Rule 31 General Civil Mediators applying for Family Listing. Taking the full 46-hour Family Training is not required for Dual Listing.

Completion of an ADRC-approved 16-hour Family to Civil Cross-Over Training will satisfy the training requirement for listed Rule 31 Family Mediators applying for General Civil Listing. Taking the full 40-hour General Civil Training is not required for Dual Listing.

(f) **Trainer Procedure for Obtaining Curriculum Approval and Grievance Procedure.** Prior to offering their courses for initial listing training, or training to be listed as a Rule 31 Family Mediator with the designation of "specially trained in domestic violence issues", all trainers are required to obtain ADRC approval of their curricula. The trainers shall apply to the ADRC for curricula approval on forms approved by the ADRC. Any complaint regarding an ADRC approved Rule 31 initial listing training or training for special designation in domestic violence, shall be sent to the AOC Programs Manager who shall forward the same to the Training Committee appointed by the Chair of the ADRC for review. The Training Committee shall

review the Complaint and recommend any action it deems appropriate to the ADRC for final determination of action to be taken, if any.

(g) **Procedure for Rule 31 Family Mediator's Additional Designation as "Specially Trained in Domestic Violence Issues."** To obtain a designation as "Specially Trained in Domestic Violence Issues", the listed Rule 31 Family Mediator must have completed a twelve-hour course on domestic violence issues approved by the procedures outlined in subsection (f) and shall provide to the ADRC proof of attendance at the approved course. The listed Rule 31 Family Mediator may request a waiver of course attendance based upon training and/or experience determined by the ADRC to be substantially equivalent to the twelve hours of domestic violence topics approved by the ADRC.

(h) **Full-Time Judicial Officer and Full-Time Court Clerk prohibited from being Listed as Rule 31 Mediator.** A full-time Judicial Officer or full-time court clerk may not be listed as a Rule 31 Mediator. For purposes of this Rule, a full-time Judicial Officer includes all full-time judges designated in the Tennessee Code of Judicial Conduct, Rule 10, Part I. Application, of the Rules of the Tennessee Supreme Court. For the purpose of this Rule, a full-time court clerk includes a full-time clerk and master, a full-time circuit court clerk, a full-time criminal court clerk, a full-time juvenile court clerk, and a full-time general sessions court clerk. The Commission shall not list a full-time Judicial Officer or a full-time court clerk as a Rule 31 Mediator.

(i) **Listing of Part-time Judicial Officers.** If the applicant otherwise meets the requirements of the Rule, the part-time Judicial Officers designated in the Tennessee Code of Judicial Conduct Rule 10, Part I. Application, of the Rules of the Tennessee Supreme Court may be listed as Rule 31 Mediators, subject to the limitations found in Tenn. Sup. Ct. R. 10.

Section 15. Additional Obligations of Rule 31 Mediators. Rule 31 Mediators must maintain a current mailing address, e-mail address, and phone number with the Programs Manager of the Administrative Office of the Courts. Any change of mailing address, e-mail address, or phone number must be provided within thirty days of such change.

(a) **Continuing Mediation Education.**

To remain listed by the ADRC, Rule 31 Mediators shall comply with the following continuing mediation education ("CME") requirements:

(1) Courses for continuing education under this Rule may include but are not limited to, courses approved by the Commission on Continuing Legal Education & Specialization, programs approved by professional licensing agencies, programs provided by not-for-profit community mediation centers and not-for-profit mediation associations.

(2) Rule 31 Mediators must complete six hours of continuing mediation education every two years.

(i) General Civil Mediators — The six hours shall consist of: (A) Three hours in mediation continuing education, of which at least one hour shall be related to mediation ethics, and (B) Three hours general continuing education.

(ii) Family Mediators — The six hours shall consist of: (A) Three hours in mediation continuing education, of which at least one hour shall be related to mediation ethics, and (B) Three hours continuing education in

family law.

(iii) Meeting the Rule 31 Family Mediator listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing continuing education requirements. For dually listed Rule 31 Mediators who were not initially listed in the same year, the Mediator shall complete the hours required in Section 15(a)(2)(i-ii) of this Rule every two years based on the initial listing year of the Family listing.

(3) Rule 31 Mediators who are attorneys are not exempt from the continuing mediation education requirements of Rule 31 Section 15(a) of this Rule as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(c).

(4) Failure to comply with continuing education requirements by March 31 following the year the hours were due will result in the lapse of the Rule 31 Mediator's listing. Mediators cannot choose to have their listing(s) lapse and then have the listing(s) reactivated upon completion of CME hours that were past due.

(5) A mediator whose credentials have lapsed for failure to comply with CME requirements must re-apply to the ADRC for listing and must have taken all required training per section 14. If previous training was completed prior to five years from the reapplication for listing, it is no longer valid and the applicant must re-take the training pursuant section 14. CME hours for dually listed mediators are due every two years based on the initial listing year of the Family listing. Failure to renew or comply with CME requirements based on the initial listing year of the Family listing will result in the lapse of credentials for both listings. Per (a)(2)(iii) of this section, meeting the Rule 31 Family Mediator listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing continuing education requirements.

(b) Annual Renewal of Rule 31 Mediator Status.

As a condition of continued listing, each Rule 31 Mediator must file an annual renewal form with the AOC Programs Manager stating that he/she is in good standing with any professional licensing agency or organization, if applicable, provide proof of attendance/completion of required continuing mediation education, and must pay the annual registration fee set by the ADRC.

If all requirements of a Rule 31 Mediator's annual renewal have not been completed by March 31 of the renewal year, then the Rule 31 Mediator's listing lapses.

(c) Pro Bono Service.

As a condition of continued listing, each Rule 31 Mediator shall, if requested by a Court, conduct three pro bono mediations per year, not to exceed 20 total hours for all mediations. At the initiation of a pro bono mediation, the Court may, upon a showing by one or more parties of an inability to pay, direct that the Rule 31 Mediator serve without pay. No Rule 31 Mediator will be required to conduct more than three pro bono proceedings or serve pro bono for more than 20 hours in any continuous 12-month period. A Rule 31 Mediator should aspire to render a minimum of fifty (50) hours of pro bono mediation services per year.

(d) Reports Required of Rule 31 Mediators.

In addition to compliance with Section 5 of this Rule, Rule 31 Mediators

shall be required to submit to the ADRC reports of any data requested by the ADRC as to mediation conducted by a Rule 31 Mediator, including those mediations which are not Rule 31 Mediations. The report forms will be available on the AOC website and from the AOC. Such reports are confidential, not subject to disclosure for inspection or copying and will be maintained by the AOC for statistical compilation and analysis purposes only.

(e) **Procedure Upon Revocation or Suspension.**

(1) All listed Rule 31 Mediators subject to the provisions of this Rule, upon being subjected to revocation or suspension by any professional licensing agency or organization, within or outside the State of Tennessee, shall promptly inform the ADRC of such action in the manner prescribed herein.

(2) The listed Rule 31 Mediator, within 14 days of receipt of being advised of such revocation or suspension by the professional licensing agency or organization, shall provide notification of such action to the ADRC. Such notification to the ADRC shall include a copy of any order or directive by the professional licensing agency or organization setting forth the nature and duration of such revocation or suspension.

(3) In the event the discipline imposed by the professional licensing agency or organization has been stayed, any discipline imposed by the ADRC shall be deferred until such stay expires.

(4) Within 30 days after notification as provided above, the ADRC shall impose identical discipline unless the listed Rule 31 Mediator appeals to the ADRC the imposition of such discipline. The ADRC shall impose identical discipline unless it finds upon the face of the record upon which the discipline is predicated:

(i) That the procedure clearly was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) That there clearly was such an infirmity of proof establishing the misconduct as to give rise to the conviction that the ADRC could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) That the misconduct established clearly warrants substantially different discipline.

Where the ADRC determines that any of said elements exist, the ADRC shall enter such other order as it deems appropriate.

(5) In all other respects, a final adjudication by the professional licensing agency or organization that the listed Rule 31 Mediator has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding by the ADRC.

(6) If the professional licensing agency or organization rescinds or otherwise terminates the revocation or suspension of a formerly listed Rule 31 Mediator, a certified copy of the agency's or organization's rescission or termination order shall constitute clear and convincing evidence of the same. Upon the removal of such revocation or suspension, an individual formerly listed as a Rule 31 Mediator under this Rule shall be entitled to apply to the ADRC for listing, under the then applicable criteria for listing.

PROVISIONS FOR ADMINISTRATION OF RULE 31**Section 16. Alternative Dispute Resolution Commission.**

(a) The ADRC members shall be appointed by the Supreme Court to three-year terms. No member who has served two successive three-year terms shall be eligible for reappointment to the ADRC until three years after the termination of the most recent term. The Court shall appoint one of the ADRC's members as the Chair for a two-year term. The ADRC shall have the responsibility for:

- (1) Reviewing and revising, if appropriate, the standards for listing Rule 31 Mediators;
 - (2) Determining the procedure for listing Rule 31 Mediators;
 - (3) Preparing and disseminating appropriate publications containing details regarding Rule 31 Mediations;
 - (4) Reviewing and revising, as and when appropriate, the standards of professional conduct that shall be required of Rule 31 Mediators;
 - (5) Reviewing the content of training programs to determine whether they meet the standards for qualification under Rule 31;
 - (6) Assuring that all listed Rule 31 Mediators have participated in approved training, have complied with qualification requirements, and have certified their agreement to follow the guidelines and applicable standards and their understanding of the sanctions for failure to comply;
 - (7) Reviewing and, where appropriate, approving applications for listing of Rule 31 Mediators;
 - (8) Evaluating the success of Rule 31 Mediations based on participant satisfaction, quality of results, and effect on case management;
 - (9) Evaluating and reviewing each listed Rule 31 Mediator for continued compliance with the established standards and requirements for continued listing;
 - (10) Suggesting to the Supreme Court rules and amendments of rules regarding alternative dispute resolution proceedings;
 - (11) Setting and collecting appropriate training, listing, and renewal fees; and
 - (12) Taking such other steps as may be reasonably necessary to establish, maintain and improve the alternative dispute resolution program in Tennessee.
- (b) The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate.
- The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, mediators, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission.
- (c) The day-to-day work of the ADRC shall be conducted by the Programs Manager of the Administrative Office of the Courts who shall be responsible for:
- (1) Processing applications for inclusion on the list of Rule 31 Mediators in accordance with procedures recommended by the ADRC and approved by the Supreme Court;
 - (2) Processing annual renewal forms from Rule 31 Mediators and approving their continued qualification for Rule 31 listing;

- (3) Taking such steps as may be necessary to provide the list of Rule 31 Mediators to the appropriate clerks of court and to maintain a current list of Rule 31 Mediators on the AOC website;
- (4) Coordinating, approving, or providing training to Rule 31 Mediators;
- (5) Processing grievances against Rule 31 Mediators;
- (6) Coordinating the work of and assisting the ADRC;
- (7) Assisting in the evaluation of alternative dispute resolution programs; and
- (8) Taking such other steps in conjunction with the Supreme Court and the ADRC as may be reasonably necessary to establish, maintain and improve the alternative dispute resolution program in Tennessee.

Law Reviews. A Judge's View — ADR and the Federal Courts — The Eastern District of Tennessee, 26 U. Mem. L. Rev. 995 (1996).

Adoption and Custody: Current Trends in Tennessee Family Law: Bridge Over Troubled Water: Changing the Custody Laws in Tennessee, 27 U. Mem. L. Rev. 769 (1997).

Alternative Dispute Resolution in the Personal Injury Forum, 26 U. Mem. L. Rev. 1169 (1996).

Employment Dispute Resolution: An Idea Whose Time Has Come? (Robert L. Arrington), 37 No. 10 Tenn. B.J. 32 (2001).

Essay-Ethical Dilemmas in Mediation, 31 U. Mem. L. Rev. 59 (2000).

Family Mediation in Tennessee, 26 U. Mem. L. Rev. 1085 (1996).

Mediation and the Magistrate Judge, 26 U. Mem. L. Rev. 1007 (1996).

Mediation U.S.A., 26 U. Mem. L. Rev. 1031 (1996).

Neighborhood Justice Centers: Community Use of ADR — Does It Really Work?, 26 U. Mem. L. Rev. 1197 (1996).

Resolving Commercial Cases Through Alternative Dispute Resolution, 26 U. Mem. L. Rev. 1121 (1996).

The Problem of Impasse in Mediation (Newton P. Allen), 34 No. 3 Tenn. B.J. 18 (1998).

The Sophisticated Consumer's Guide to Alternative Dispute Resolution Techniques: What You Should Expect (or Demand) from ADR Services, 26 U. Mem. L. Rev. 975.

Torts — Wagshal v. Foster: Mediators, Case Evaluators, and Other Neutrals — Should They Be Absolutely Immune?, 26 U. Mem. L. Rev. 1229 (1996).

Use of Alternative Dispute Resolution in Employment-Related Disputes, 26 U. Mem. L. Rev. 1131 (1996).

Yesterday's Vision, Tomorrow's Challenge: Case Management and Alternative Dispute Resolution in Tennessee, 26 U. Mem. L. Rev. 957 (1996).

Attorney General Opinions. Application of Public Records Act, OAG 96-147 (12/18/96).

Application of public purchases law, OAG 96-147 (12/18/96).

Disciplinary Board Opinions. An approved Rule 31 mediator may list himself as "Approved Rule 31 Mediator" or "Tennessee Supreme Court Approved Mediator" on the attorney's letterhead. Formal Ethics Opinion 98-F-142 (7/8/98).

NOTES TO DECISIONS

ANALYSIS

1. In General.
2. Applicability.
3. Authority of Dispute Resolution Neutral.
4. Improper Procedures.
5. Confidentiality.

1. In General.

All court-annexed alternative dispute resolution procedures must be consistent with Tenn. Sup. Ct. R. 31. Team Design v. Gottlieb, 104 S.W.3d 512, 2002 Tenn. App. LEXIS 508 (Tenn. Ct. App. 2002), overruled in part, Tuetken v. Tuetken, 320 S.W.3d 262, 2010 Tenn. LEXIS 873 (Tenn. 2010).

While the courts may require or compel the litigants to sit down and talk with each other,

they cannot force them to resolve their differences using alternative dispute resolution in lieu of their judicial remedies. Team Design v. Gottlieb, 104 S.W.3d 512, 2002 Tenn. App. LEXIS 508 (Tenn. Ct. App. 2002), overruled in part, Tuetken v. Tuetken, 320 S.W.3d 262, 2010 Tenn. LEXIS 873 (Tenn. 2010).

A mediation session was not a court proceeding such as would satisfy the requirement that the parties' marital dissolution agreement be made in open court; the husband repudiated the agreement prior to any judicial consideration, and because consent had to exist at the very moment the court undertook to make the agreement the judgment of the court, the trial court properly held that it could not enter a judgment on the agreement; because the terms of the oral agreement were not made or an-

nounced in open court and on the record, the court neither sanctioned nor considered the agreement. *Ledbetter v. Ledbetter*, 163 S.W.3d 681, 2005 Tenn. LEXIS 345 (Tenn. 2005).

2. Applicability.

Tenn. Sup. Ct. R. 31 does not clearly delineate an exception to the Public Records Act and an appellate court does not have the authority to create one, and therefore a confidential mediated settlement agreement is not excepted from disclosure under the Act. *Allen v. Day*, 213 S.W.3d 244, 2006 Tenn. App. LEXIS 542 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 1211 (Tenn. Dec. 27, 2006).

Trial court did not err in denying an award of attorney fees to a newspaper in a suit in which a company, that was the functional equivalent of a government agency, was ordered to disclose a confidential mediated settlement agreement because the trial court had not abused its discretion in having found that the company had acted reasonably and in good faith. *Allen v. Day*, 213 S.W.3d 244, 2006 Tenn. App. LEXIS 542 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 1211 (Tenn. Dec. 27, 2006).

3. Authority of Dispute Resolution Neutral.

A chancellor designated to serve as a “Settlement judge” under local rules of court cannot enter a consent decree with the knowledge that one of the parties has withdrawn its consent to an oral agreement reached at a judicial settlement conference but not reduced to writing, transcribed or otherwise entered on the record at the time of the oral agreement. *Environmental*

Abatement, Inc. v. Astrum R. E. Corp., 27 S.W.3d 530, 2000 Tenn. App. LEXIS 126 (Tenn. Ct. App. 2000).

A dispute resolution neutral, including a judge acting in that capacity, has no authority to dispose of a case or to enter an order disposing of a case: the neutral’s powers include only the filing of a report indicating whether the case was completely settled or partially settled. *Environmental Abatement, Inc. v. Astrum R. E. Corp.*, 27 S.W.3d 530, 2000 Tenn. App. LEXIS 126 (Tenn. Ct. App. 2000).

4. Improper Procedures.

Conducting a mediation before the judge to whom the case has been assigned is contrary to Tenn. S. Ct. R. 31. *Team Design v. Gottlieb*, 104 S.W.3d 512, 2002 Tenn. App. LEXIS 508 (Tenn. Ct. App. 2002), overruled in part, *Tuetken v. Tuetken*, 320 S.W.3d 262, 2010 Tenn. LEXIS 873 (Tenn. 2010).

5. Confidentiality.

Although the trial court properly concluded that a private company that managed a city sports arena acted as the functional equivalent of a government agency in the management of the arena, and as such was subject to the public records act, the court erred in ordering that a confidential mediated settlement agreement between the company and the cheerleaders for a sports team had to be publicly disclosed and filed with the clerk’s office instead of merely providing the newspaper reporter with a copy of the document. *Allen v. Day*, 213 S.W.3d 244, 2006 Tenn. App. LEXIS 542 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 1211 (Tenn. Dec. 27, 2006).

Rule 31A. Alternative Dispute Resolution — Case Evaluation, Judicial Settlement Conference, Mini-Trial, Non-Binding Arbitration, and Summary Jury Trial.

Compiler’s Notes. In its order dated March 14, 2018, the Supreme Court provided that: “On March 9, 2018, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition seeking to adopt amendments to Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and seeking to adopt a new Supreme Court Rule 31A. The petition asserts that the amendments are needed to divide Supreme Court Rule 31 into Rule 31 and Rule 31A; to redefine and clarify the eligible civil actions encompassed by Rule 31; to establish grievance procedures; to clarify matters related to confidentiality, privilege, and admissibility; to clarify the obligations of Rule 31 mediators; to modify and clarify the training and listing requirements for mediators; to propose additional duties for mediators; and to remove appendices B-E from Rule 31. The petition and proposed amendments are attached as an appendix to this Order. The Court hereby solicits written

comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is June 12, 2018. Written comments should reference the docket number set out above and may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to: James M. Hivner, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-14.”

In its order dated October 3, 2018, the Supreme Court provided that: “On March 9, 2018, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition seeking to adopt amendments to Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and seeking to adopt a new Supreme Court Rule 31A. The petition asserts that the amendments are needed to divide Supreme Court Rule 31 into Rule 31 and Rule 31A; to redefine and clarify the eligible civil actions encompassed by Rule

31; to establish grievance procedures; to clarify matters related to confidentiality, privilege, and admissibility; to clarify the obligations of Rule 31 mediators; to modify and clarify the training and listing requirements for mediators; to propose additional duties for mediators; and to remove appendices B-E from Rule 31.

"In response to the petition, the Court received and reviewed responses from the ADRC, the Tennessee Bar Association, the Knoxville Bar Association, the Chattanooga Bar Association, the Nashville Bar Association, the Tennessee Board of Professional Responsibility, University of Tennessee Law Professor Becky Jacobs, and numerous mediation centers and individuals. The Court expresses its appreciation for all of the responses. After due consideration, the Court hereby amends Tennessee Supreme Court Rule 31 and Appendix A of Rule 31 and adopts Tennessee Supreme Court Rule 31A in the form attached to this Order.

"The effective date of the revisions to Rule 31,

Appendix A of Rule 31, and Rule 31A, with the exception of Rule 31, sections 14(2) and 15(a)(4), shall be November 1, 2018.

"The effective date of the revisions to Rule 31, sections 14(2) and 15(a)(4) shall be November 1, 2019. This effective date will allow Rule 31 Mediators who are currently on inactive status sufficient time to change their status to active if they choose to do so. Otherwise, as of November 1, 2019, the listing for Rule 31 Mediators on inactive status will lapse and mediators who are on inactive status will have to reapply to become Rule 10/03/2018 31 Listed Mediators. In addition, the amendment from a fifteen-year training validity to a six-year training validity will be effective November 1, 2019, to allow anyone who completed a Rule 31 training within fifteen years to apply before the amendment of a six-year training validity becomes effective. See Tenn. Sup. Ct. R. 31, sections 14(2) and 15(a)(4)."

GENERAL PROVISIONS

Section 1. Application. The standards and procedures adopted under this Rule apply only to Rule 31A ADR Proceedings and only to dispute resolution neutrals serving pursuant to this Rule. They do not affect or address the general practice of alternative dispute resolution in the private sector outside the ambit of Rule 31A. Pursuant to the provisions of this Rule, a court may order the parties to an Eligible Civil Action to participate in a Rule 31A ADR Proceeding. Rule 31A ADR Proceedings are subject to the supervision of the Court in which the Eligible Civil Action is pending.

Section 2. Definitions.

(a) "Case Evaluation" as set forth in Sections 15 and 18 of this Rule, is a process in which a neutral person or three-person panel, called an evaluator or evaluation panel, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute, as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer an evaluation of the case.

(b) "Court" means any court exercising civil jurisdiction subject to the Tennessee Supreme Court Rules.

(c) "Days" for purposes of the deadlines imposed by this Rule, means calendar days.

(d) "Eligible Civil Action" includes any civil action filed in a Court in which the Court has continuing jurisdiction, except civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile delinquency cases. The term "Extraordinary writs" does not encompass claims or applications for injunctive relief.

(e) "Judicial Officer" serves by election or continuing appointment in a judicial office, such as: 1) a sitting judge in a Court; or 2) a Juvenile Referee, Divorce Referee, Referee, and Special Master.

(f) "Judicial Settlement Conference" as set forth in Section 16 of this Rule, is a mediation conducted by a Judicial Officer selected by the Court.

(g) “Mini-Trial” as set forth in Sections 14 and 19 of this Rule, is a settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation the parties or their representatives seek a negotiated settlement of the dispute.

(h) “Non-Binding Arbitration” as set forth in Sections 13 and 17 of this Rule, is a process in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is non-binding.

(i) “Order of Reference” is a written or standing order of a court entered in or related to an Eligible Civil Action in accordance with Section 3 of this Rule directing the parties to participate in a Rule 31A ADR Proceeding.

(j) “Rule 31A ADR Proceeding” is an alternative dispute resolution proceeding in or related to an Eligible Civil Action, including, but not limited to “Case Evaluations”, “Judicial Settlement Conferences”, “Mini-Trials”, “Non-Binding Arbitrations”, or “Summary Jury Trials”.

(k) A “Rule 31A Neutral” is any impartial person, licensed as an attorney, who acts as a guide in a Rule 31A ADR Proceeding. Rule 31A Neutrals are required to be licensed attorneys.

(l) A “Summary Jury Trial” as set forth in Section 20 of this Rule is an abbreviated trial with a jury in which litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31A ADR PROCEEDINGS

Section 3. Initiation/Order of Reference.

(a) Rule 31A ADR Proceedings may be initiated in any Eligible Civil Action by the entry of an Order of Reference.

(b) Upon motion of either party, or upon its own initiative, a Court, by Order of Reference, may order the parties in an Eligible Civil Action to participate in a Judicial Settlement Conference. With the consent of the parties, trial courts are also authorized to order the parties to participate in a Case Evaluation.

(c) Any Order of Reference made on the Court’s own initiative shall be subject to review on motion by any party and shall be vacated should the Court determine in its sound discretion that the referred case is not appropriate for a Rule 31A ADR Proceeding or is not likely to benefit from submission to a Rule 31A ADR Proceeding. Pending disposition of any such motion, the Rule 31A ADR Proceeding shall be stayed without the need for a court order.

(d) Upon motion of a party, or upon its own initiative and with the consent of all parties, a Court, by Order of Reference, may order the parties to participate in Non-Binding Arbitration, Mini-Trial, Summary Jury Trial, or other appropriate alternative dispute resolution proceedings.

(e) All Rule 31A ADR Proceedings shall be concluded as efficiently and expeditiously as possible given the circumstances of the case.

Section 4. Selection of Rule 31A Neutrals.

(a) Within 15 days of the date of an Order of Reference, with the exception of an Order of Reference for a Judicial Settlement Conference, the parties must notify the Court of the Rule 31A Neutral or Rule 31A Neutrals agreed to by the parties or of their inability to agree on a Rule 31A Neutral or Rule 31A Neutrals.

(b) When the parties cannot agree on the selection of a Rule 31A Neutral or Neutrals, the Court shall nominate a Rule 31A Neutral or Neutrals in accordance with the following procedure:

(1) In a Rule 31A Proceeding in which a single Rule 31A Neutral will serve, the Court shall designate three Rule 31A Neutrals having the appropriate qualifications as set forth in this Rule and one additional Rule 31A Neutral for each additional party over two.

(2) In a Case Evaluation or Non-Binding Arbitration before a panel of three or more Rule 31A Neutrals, the court shall designate three Rule 31A Neutrals, meeting the qualifications as set forth in this for each seat on the panel and one additional Rule 31A Neutral for each seat on the panel for each additional party over two.

(3) After receiving the Court's nominations, each party shall strike one name from the Court's list for each Rule 31A Neutral being selected. The Court then shall appoint the remaining Rule 31A Neutral or Neutrals unless a valid and timely objection is made within 10 days of the Court's appointment. In the event the designated Rule 31A Neutral cannot serve, the process will be repeated to the extent necessary.

(4) The Court's nomination of Rule 31A Neutrals shall be fairly distributed among those who meet the qualifications set forth in Rule 31A Sections 14-18 of this Rule, unless the matter requires particular expertise not possessed by all who meet those qualifications.

Section 5. Reports. At the conclusion of a Rule 31A ADR Proceeding, the Rule 31A Neutral shall submit a final report to the Court by filing same with the clerk of the court. The final report shall state only: (i) the name of the parties who appeared and participated in the Rule 31A ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31A Neutral requests that the costs of the Rule 31A Neutral's services be charged as court costs. The report shall be submitted within the time specified by the court in the Order of Reference. In the event there is no Order of Reference or the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the conclusion of the Rule 31A ADR Proceeding or within the time period specified by the Court.

Section 6. Participation of Attorneys. Attorneys may participate with their clients during Rule 31A ADR Proceedings.

Section 7. Confidential and Inadmissible Evidence. Evidence of conduct, information disclosed, or statements made in the course of a Rule 31A ADR Proceeding conducted by a Rule 31A Neutral is confidential to the extent provided in the Order of Reference or as provided by other law or rule of this State. Such evidence shall be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408. No Rule 31A Neutral may be compelled to testify by deposition or otherwise regarding

such conduct, information or statements. A written mediated agreement is admissible to enforce the understanding of the parties.

Section 8. Costs. The costs of any Rule 31A ADR Proceeding, including the costs of the services of a Rule 31A Neutral may, at the request of the Rule 31A Neutral, be charged as court costs. The request to charge the costs of the services of the Rule 31A Neutrals should be submitted to the Court by filing same with the clerk of the court. If the parties appeal to the appellate court(s) the parties shall advise the appellate court in their briefs whether the Rule 31A Neutral(s) requested that the cost of the Rule 31A Neutral's services be included in the court costs.

The Court may, in its sound discretion, waive or reduce the costs of a Rule 31A ADR Proceeding.

PROVISIONS APPLICABLE TO ALL RULE 31A NEUTRALS

Section 9. Standards of Professional Conduct for Rule 31A Neutrals.

(a) Rule 31A Neutrals shall avoid the appearance of impropriety.

(b) Rule 31A Neutrals shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31A ADR Proceedings, including but not limited to the Standards of Professional Conduct for Covered Neutrals attached as Appendix A hereto. Under Tenn. Sup. Ct. R. 8, RPC 2.4(c)(9), violation of any of these rules and procedures by any Rule 31A Neutral who is an attorney constitutes a violation of the Rules of Professional Conduct and should be reported directly to Board of Professional Responsibility.

(c) The Standards of Professional Conduct for Covered Neutrals attached as Appendix A are incorporated into this Rule.

Section 10. Obligations of Rule 31A Neutrals.

(a) Before the commencement of any Rule 31A ADR Proceeding, the Rule 31A Neutral shall:

(1) Make a full and written disclosure of any known relationships with the parties or their counsel which may affect or give an appearance of affecting the neutrality of the Rule 31A Neutral.

(2) Advise the parties regarding the Rule 31A Neutral's qualifications and experience.

(3) Discuss with the parties the rules and procedures that will be followed in the Rule 31A ADR Proceeding.

(b) During Rule 31A ADR Proceedings, the Rule 31A Neutral shall:

(1) Advise the Court in which the proceeding is pending if the Rule 31A ADR proceeding is, or is likely to become, inappropriate, unfair, or detrimental in the referred action.

(2) Maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(3) Refrain from giving legal advice, while serving as a Rule 31A Neutral, to the parties in the Rule 31A ADR Proceeding. However, while a Rule 31A Neutral should not offer a firm opinion as to how the court in which a case has been filed will resolve the case, a Rule 31A Neutral may point out possible outcomes of the case and may indicate a personal view of the persuasiveness of

a articular claim or defense. Moreover an “evaluation” pursuant to a Case Evaluation, an “award” pursuant to a Non-Binding Arbitration, or an “advisory verdict” pursuant to a Summary Jury Trial will not be considered to be “legal advice” for purposes of this Rule.

(c) During and following Rule 31A ADR Proceedings, Rule 31A Neutrals shall:

(1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master, or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31A ADR Proceeding was conducted.

(2) Provide a timely report as required under section 5 of this Rule.

(3) Avoid any appearance of impropriety in the Rule 31A Neutral’s relationship with any member of the judiciary or the judiciary’s staff with regard to the Rule 31A ADR Proceeding or the results of the Rule 31A ADR Proceeding,

(4) Preserve and maintain the confidentiality of all information obtained during the Rule 31A ADR Proceeding and shall not divulge information obtained by the Rule 31A Neutral during the course of Rule 31A ADR Proceeding without the consent of the parties, except as otherwise may be required by law.

(d) A Rule 31A Neutral shall not be called as a witness in any proceeding to enforce any terms of the resulting agreement.

Section 11. Privilege and Immunity. Activity of Rule 31A Neutrals in the course of Rule 31A ADR Proceedings shall be deemed to be privileged and the performance of a judicial function and for such acts Rule 31A Neutrals shall be entitled to judicial immunity.

Section 12. Compensation. Rule 31A Neutrals are entitled to be compensated at a reasonable rate for participation in court-ordered alternative dispute resolution proceedings.

PROVISIONS REGARDING QUALIFICATIONS OF RULE 31A NEUTRALS

Section 13. Rule 31A Neutrals in Rule 31A Non-Binding Arbitration.

(a) The Parties may select any lawyer in good standing to act as an arbitrator in a Non-Binding Arbitration.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an arbitrator in a Non-Binding Arbitration of a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an arbitrator in a Non-Binding Arbitration of a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which time a substantial portion of the lawyer’s practice shall have been family cases.

Section 14. Rule 31A Neutrals Presiding in Mini-Trials.

(a) The Parties may select any lawyer in good standing and admitted to practice to act as a Rule 31A Neutral in a Mini-Trial.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as a Rule 31A Neutral in a Mini-Trial in a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as a Rule 31 Neutral in a Mini-Trial in a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which a substantial portion of the lawyer's practice shall have been in family cases.

Section 15. Rule 31 Case Evaluators.

(a) The parties may select any lawyer in good standing to act as an evaluator in general civil or family cases.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an evaluator in a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an evaluator in a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which a substantial portion of the lawyer's practice shall have been in family cases.

PROVISIONS RELATIVE TO PARTICULAR RULE 31A ADR PROCEEDINGS

Section 16. Judicial Settlement Conferences. Trial courts are authorized to conduct Judicial Settlement Conferences. However, a judge who participates in a Judicial Settlement Conference is precluded from presiding over the trial or any other contested issues in that matter.

Section 17. Non-Binding Arbitration. Trial courts, with the consent of the parties, are authorized to order Non-Binding Arbitration. Rule 31A Neutrals serving in Non-Binding Arbitrations will be subject to Appendix A, Standards of Professional Conduct for Covered Neutrals.

Section 18. Case Evaluation. Trial courts, with the consent of the parties, are authorized to order a Case Evaluation. Rule 31A Neutrals serving in Case Evaluations will be subject to Appendix A, Standards of Professional Conduct for Covered Neutrals.

Section 19. Mini-Trial. Mini-Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the Court, design a procedure which is suited for the Eligible Civil Action. Rule 31A Neutrals serving in Mini-Trials will be subject to Appendix A, Standards of Professional Conduct for Covered Neutrals.

Section 20. Summary Jury Trial. Summary Jury Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the Court, can design a procedure which is suited for the Eligible Civil Action. Rule 31A Neutrals serving in Summary Jury Trials will be subject to Appendix A. Standards of Professional Conduct for Covered Neutrals.

APPENDIX A

STANDARDS OF PROFESSIONAL CONDUCT FOR COVERED
NEUTRALS

Section 1. Preamble.

(a) Scope; Purpose. These standards are intended to instill and promote public confidence in the Alternative Dispute Resolution process under Tennessee Supreme Court Rules 31 and 31A and to be a guide to Neutrals serving under the same. The term “Neutral” as used in these standards refers only to those serving under Rule 31 or 31A. These standards do not affect or address the general practice of mediation or alternative dispute resolution in the private sector outside the ambit of Rules 31 and 31A. The term “ADR Proceeding” as used in these standards refers only to Rule 31 and Rule 31A proceedings. As with other forms of judicial system activity, Rule 31 and 31A proceedings must be built on public understanding and confidence. Persons serving as Neutrals are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence. These are a guide to Neutrals conduct in discharging their professional responsibilities under Supreme Court Rules 31 and 31A.

(b) Neutral’s Role. In dispute resolution proceedings, decision-making authority rests with the parties. The role of the Neutral includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements.

(c) General Principles. A dispute resolution proceeding under Rules 31 and 31A is based on principles of communication, negotiation, facilitation, and problem-solving that emphasize:

- (1) the needs and interests of the participants;
- (2) fairness;
- (3) procedural flexibility;
- (4) privacy and confidentiality;
- (5) full disclosure; and
- (6) self-determination.

Section 2. General Standards and Qualifications.

(a) General. Integrity, impartiality, and professional competence are essential qualifications of any Neutral. A Neutral shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service.

(1) A Neutral shall not accept any engagement, perform any service, or undertake any act which would compromise the Neutral’s integrity.

(2) A Neutral shall maintain professional competence in dispute resolution skills including but not limited to:

- (A) staying informed of and abiding by all statutes, rules, and administrative orders relevant to the practice of Rule 31 Mediations and 31A ADR Proceedings as applicable;
- (B) continuing to meet the requirements of these rules; and
- (C) regularly engaging in educational activities promoting professional

growth.

(3) A Neutral shall decline appointment, withdraw, or request technical assistance when the Neutral decides that a case is beyond the Neutral's competence.

(b) **Concurrent Standards.** Nothing herein shall replace, eliminate, or render inapplicable relevant ethical standards not in conflict with these rules which may be imposed by the Code of Responsibility with respect to lawyers, or similar sets of standards imposed upon any Neutral by virtue of the Neutral's professional calling.

Section 3. General Standards and Qualifications. A Neutral shall be candid, accurate, and fully responsive to the Court concerning the Neutral's qualifications, availability, and all other pertinent matters. A Neutral shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. A Neutral is responsible to the judiciary for the propriety of the Neutral's activities and must observe judicial standards of fidelity and diligence. A Neutral shall refrain from any activity which has the appearance of improperly influencing the Court to secure appointment to a case, including gifts or other inducements to court personnel.

Section 4. The Dispute Resolution Process.

(a) **Orientation Session.** On commencement of the ADR Proceeding, a Neutral shall inform all parties that settlements and compromises are dependent upon the consent of the parties, that the Neutral is an impartial facilitator, and that the Neutral may not impose or force any settlement on the parties.

(b) **Continuation of an ADR Proceeding.** A Neutral shall not unnecessarily or inappropriately prolong a dispute resolution session if it becomes apparent that the case is unsuitable for dispute resolution or if one or more of the parties is unwilling or unable to participate in the dispute resolution process in a meaningful manner.

(c) **Avoidance of Delays.** A Neutral shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. A Neutral shall refrain from accepting appointments when it becomes apparent that completion of the dispute resolution assignments accepted cannot be done in a timely fashion. A Neutral shall perform the dispute resolution services in a timely and expeditious fashion, avoiding delays wherever possible.

Section 5. Self-Determination.

(a) **Parties' Right to Decide.** A Neutral engaged in an ADR Proceeding shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties themselves.

(b) **Prohibition of Neutral Coercion.** A Neutral shall not coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to an ADR Proceeding.

(c) **Prohibition of Misrepresentation.** A Neutral shall not intentionally nor knowingly misrepresent material facts or circumstances in the course of conducting an ADR Proceeding.

(d) **A Balanced Process.** A Neutral shall promote a balanced process in an ADR Proceeding and shall encourage the parties to conduct the proceeding in a nonadversarial manner.

(e) **Mutual Respect.** A Neutral shall promote mutual respect among the parties throughout the dispute resolution process.

Section 6. Impartiality.

(a) **Impartiality.** A Neutral shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party conducting ADR Proceedings.

(1) A Neutral shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.

(2) A Neutral shall withdraw from the ADR Proceeding if the Neutral believes that he or she can no longer be impartial.

(3) A Neutral shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in and arising from any ADR Proceeding.

(b) **Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.**

(1) A Neutral must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the ADR Proceeding. Disclosure must also be made of any pertinent pecuniary interest. Such disclosures shall be made as soon as practical after the Neutral becomes aware of the interest or the relationship.

(2) A Neutral must disclose to the parties or to the Court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in these standards, which might reasonably raise a question as to the Neutral's impartiality. All such disclosures shall be made as soon as practical after the Neutral becomes aware of his or her candidacy as a Neutral in a given proceeding or becomes aware of the interest or the relationship.

(3) The burden of disclosure rests on the Neutral. After appropriate disclosure, the Neutral may serve if all parties so desire. If the Neutral believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(4) A Neutral shall not provide counseling or therapy to either party during the dispute resolution process, nor shall a Neutral who is a lawyer represent any party in any matter during the dispute resolution proceeding.

(5) A Neutral shall not use the dispute resolution process to solicit, encourage, or otherwise incur future professional services with either party.

(6) A Neutral shall refrain from the appearance of serving as a legal advocate for one or both parties to an ADR Proceeding. A Neutral shall explain to the parties to the ADR Proceeding that the Neutral is not the advocate for either party nor is the Neutral the advocate for both parties.

Section 7. Confidentiality.

(a) **Required.** A Neutral shall preserve and maintain the confidentiality of all ADR Proceedings except where required by law to disclose information.

(b) **When Disclosure Permitted.** A Neutral conducting an ADR Proceeding shall keep confidential from the other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure.

(c) Records. A Neutral shall maintain confidentiality in storing or disposing of records and shall render anonymous all identifying information when materials are used for research, training, or statistical compilations.

Section 8. Professional Advice. In addition to complying with Section 10(b)(3) of Rules 31 and 31A:

(a) Generally.

A Neutral shall not provide information the Neutral is not qualified by training or experience to provide.

(b) Independent Legal Advice.

When a Neutral believes a party does not understand or appreciate how an ADR Proceeding or resulting agreement may adversely affect legal rights or obligations, the Neutral shall advise the participants to seek independent legal counsel.

(c) When Party Absent.

If one of the parties is unable to participate in ADR Proceeding for psychological or physical reasons, a Neutral should postpone or cancel the proceeding until such time as all parties are able and willing to resume. Neutrals may refer the parties to appropriate resources if necessary (social service, lawyer referral, or other resources).

Section 9. Fees and Expenses.

(a) General Requirements. A Neutral occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the Neutral must be governed by the same high standards of honor and integrity that apply to all other phases of the Neutral's work. A Neutral must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case. If fees are charged, a Neutral shall give a written explanation of the fees and related costs, including time and manner of payment, to the parties prior to the ADR proceeding. The explanation shall include:

(1) the basis for and amount of charges, if any, for:

(A) sessions held in the ADR Proceeding;

(B) preparation for sessions;

(C) travel time;

(D) postponement or cancellation of ADR sessions by the parties and the circumstances under which such charges will normally be assessed or waived;

(E) preparation of any written settlement agreement;

(F) all other items billed by the Neutral; and

(2) the parties' pro rata share of fees and costs for the ADR Proceeding if previously determined by the Court or agreed to by the parties.

(b) Records. A Neutral shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties or to the Court upon request.

(c) Referrals. No commissions, rebates, or similar remuneration shall be given or received by a Neutral for referral of clients for ADR Proceeding or related services.

(d) Contingent Fees. A Neutral shall not charge a contingent fee or base a fee in any manner on the outcome of the process.

(e) Principles. A Neutral should be guided by the following general

principles:

- (1) Time charges for a session held in an ADR Proceeding should not be in excess of actual time spent or allocated for the session.
- (2) Time charges for preparation should be not in excess of actual time spent.
- (3) Charges for expenses should be for expenses normally incurred and reimbursable in dispute resolution cases and should not exceed actual expenses.
- (4) When time or expenses involve two or more sets of parties on the same day or trip, such time and expense charges should be prorated appropriately.
- (5) A Neutral may specify in advance a minimum charge for a session to be held in an ADR Proceeding without violating this rule.
- (6) When a Neutral is contacted directly by the parties for dispute resolution services, the Neutral has a professional responsibility to respond to questions regarding fees by providing a copy of the basis for charges for fees and expenses.

Section 10. Concluding an ADR Proceeding.

(a) With Agreement. (1) The Neutral shall request that the terms of any settlement agreement reached be memorialized appropriately and shall discuss with the participants the process for formalization and implementation of the agreement. The Neutral may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct. R. 52 and any other forms approved by the Tennessee Supreme Court.

(2) When the participants reach a partial settlement agreement, the Neutral shall discuss the procedures available to resolve the remaining issues.

(3) The Neutral shall not knowingly assist the parties in reaching an agreement which for reasons such as fraud, duress, overreaching, the absence of bargaining ability, or unconscionability would not be enforceable.

(b) Without Agreement. (1) Termination by Participants.

The Neutral shall not require a participant's further presence at an ADR Proceeding when it is clear the participant desires to withdraw.

(2) Termination by Neutral.

If the Neutral believes that the participants are unable to participate meaningfully in the process, the Neutral shall suspend or terminate the ADR Proceeding. The Neutral should not prolong unproductive discussions that would result in emotional and monetary costs to the participants. The Neutral shall not continue to provide dispute resolution services in an ADR Proceeding where there is a complete absence of bargaining ability.

Section 11. Training and Education.

(a) Training. A Neutral is obligated to acquire knowledge and training in the dispute resolution process, including an understanding of appropriate professional ethics, standards, and responsibilities.

(b) Continuing Education. It is important that Neutrals continue their professional education throughout the period of their active service. A Neutral shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.

(c) **New Neutral Training.** An experienced Neutral should cooperate in the training of new Neutrals, including serving as a mentor.

Section 12. Advertising. All advertising by a Neutral must represent honestly the services to be rendered. No claim of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. A Neutral shall make only accurate statements about the dispute resolution process, its costs and benefits, and the Neutral's qualifications.

Section 13. Relationships With Other Professionals.

(a) **The Responsibility of the Neutral Toward Other Neutrals.** (1) **Relationship With Other Neutrals.**

A Neutral should not preside over an ADR Proceeding without first endeavoring to consult with the person or persons conducting any such dispute resolution proceeding occurring simultaneously in the same case.

(2) **Co-Neutrals.**

In those situations where there is more than one Neutral in a particular case, each Neutral has a responsibility to keep the others informed of developments essential to a cooperative effort. The wishes of the parties supersede the interests of the Neutral.

(b) **Relationship With Other Professionals.**

(1) **Cooperation.**

A Neutral should respect the relationship between dispute resolution and other professional disciplines including law, accounting, mental health, and the social services and should promote cooperation between Neutrals and other professionals.

(2) **Prohibited Agreements.**

A Neutral shall not participate in offering or making a partnership or employment agreement that restricts the rights of a Neutral to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

Section 14. Advancement of Dispute Resolution.

(a) **Pro Bono Service.** Rule 31 Mediators have a professional responsibility to provide competent services to persons seeking their assistance, including those unable to pay for such services. As a means of meeting the needs of the financially disadvantaged, a Rule 31 Mediator should provide dispute resolution services pro bono or at a reduced rate of compensation whenever appropriate.

(b) **Support of Dispute Resolution.** A Neutral should support the advancement of dispute resolution by encouraging and participating in research, evaluation, or other forms of professional development and public education.

Rule 32. Term of the Chief Justice. The members of the Court shall, by majority vote, elect a Justice to serve as the Chief Justice. The term of office for the Chief Justice shall begin on September 1 and be for four (4) years with no limit on additional consecutive two-year terms. A Chief Justice may be removed for good cause upon the vote of three (3) justices. (As amended by order filed October 30, 2006; further amended by order filed September 2, 2014; and further amended by order filed and effective August 30, 2016.)

Rule 33. Tennessee Lawyer Assistance Program.**33.01. Establishment of Tennessee Lawyer Assistance Program (TLAP).**

A. Establishment. There is hereby established a state-wide lawyer assistance program to be known as Tennessee Lawyer Assistance Program (or “TLAP”) which shall provide immediate and continuing help to lawyers, judges, bar applicants and law students (hereinafter “members of the legal profession”) who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice or serve.

B. Purpose. TLAP has three purposes:

(1) to protect the interests of clients, litigants and the general public from harm caused by impaired lawyers or judges;

(2) to assist impaired members of the legal profession to begin and continue recovery; and

(3) to educate the bench and bar to the causes of and remedies for impairments affecting members of the legal profession.

C. Funding and Administration. (1) The Board of Professional Responsibility shall collect annually and deposit with the State Treasurer a twenty dollar (\$20.00) annual fee from every attorney, except those exempt under Rule 9, Section 20.2, for the purpose of funding the program established under the rule.

(2) All funds received by TLAP from gifts or bequests from any source shall be deposited with the State Treasurer.

(3) All funds deposited with the State Treasurer pursuant to subparagraphs (C)(1) and (C)(2), and all earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to TLAP. Subject to Rule 33.09(B), withdrawals from those funds shall only be made by TLAP for the purpose of funding the program established under this rule, and for such other purposes as this Court may from time to time authorize or direct. [As amended by order filed June 28, 2002, effective July 1, 2002; and by order filed December 2, 2003, effective January 1, 2004; amended by order filed and effective November 28, 2018.]

33.02. TLAP Commission.

A. Members. The Tennessee Supreme Court shall appoint Commission members to administer the TLAP. Officers of the Commission shall consist of a chair, vice chair and secretary/treasurer. The chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the Commission annually.

B. Composition. The Commission shall consist of fifteen (15) members, chosen on the basis of geography and diversity and shall include three (3) citizens who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair members of the legal profession.

C. Terms. Members shall be appointed for a three-year term. Appointments shall be staggered so that the number of terms expiring shall be the

same each year. No member shall be appointed for more than two consecutive, full three (3) year terms.

D. Duties of the Commission. The Commission shall have the following powers and duties:

(1) To establish TLAP policy and procedures consistent with this rule. Such policies and procedures shall be established after reasonable notice to the Tennessee bench and bar and opportunity for comment.

(2) To operate the program to achieve its purposes.

(3) To assure the duties listed under Rule 33.03 are carried out in the absence of a director of the program.

(4) To establish and administer a revolving loan fund as provided under and subject to the options granted in Rule 33.09.

(5) To make reports to the Tennessee Supreme Court annually or as otherwise required.

E. Meetings. The Commission shall meet quarterly, upon call of the chair or upon the request of five (5) or more members. The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission.

F. Advisory Committees. The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate. [As amended by order filed February 26, 2013, effective March 1, 2013; amended by order filed and effective November 28, 2018.]

33.03. Director of the Program.

A. Appointment/Hire. The Court shall appoint the TLAP director, who shall serve at the pleasure of the Court. Following his or her appointment by the Court, the director shall report to the Commission, which shall conduct regular performance evaluations of the director and report such evaluations to the Court.

B. Qualifications. The director shall have sufficient experience and training to enable the director to identify and assist impaired members of the legal profession and to work well with the volunteers.

C. Duties and Responsibility. The director shall:

(1) Provide initial response to help line calls.

(2) Help lawyers, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession.

(3) Help members of the legal profession and their families to secure expert counseling and treatment for chemical dependency and other illnesses, maintaining current information on available treatment services, both those that are available without charge as well as paid services.

(4) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help.

(5) Establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate under

Rules 33.05(E) or 33.07.

(6) Plan and deliver educational programs for the legal community with respect to all sources of potential impairment as well as treatment and preventative measures.

(7) Provide information about TLAP services to members of the legal profession and their families.

(8) Recruit, select, train and coordinate the activities of volunteer counselors.

(9) To the extent authorized under Rule 33.09 below, and not prejudicial to fulfillment of the duties prescribed in the preceding subparagraphs (C)(1)-(8), participate in the administration of the revolving loan fund established in Rule 33.09 and related functions assumed by any Supporting Organization established thereunder. [As amended by order filed December 18, 2007, effective January 1, 2008; amended by order filed and effective November 28, 2018.]

33.04. Volunteer Counselors. The program shall enlist volunteer counselors whose responsibility may include:

- A. Assisting in interventions planned by TLAP;
- B. Acting as twelve-step program sponsors;
- C. Acting as a contact between TLAP and law schools, courts, bar organizations and local committees;
- D. Providing compliance monitoring when appropriate; or
- E. Performing any other function deemed appropriate and necessary by the Commission to fulfill its purposes. [Amended by order filed and effective November 28, 2018.]

33.05. Services. TLAP shall provide the following services:

- A. Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;
- B. Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;
- C. Investigation, planning and participation in interventions with members of the legal profession in need of assistance;
- D. Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and
- E. Monitoring services under Rule 33.07 or under contract that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program. There are three types of monitoring agreements.

(1) **Voluntary Monitoring Agreement with no reporting party listed**

in the agreement.

The contract participant may request from TLAP letters of compliance addressed to the contract participant for the participant to provide to outside sources as he or she deems appropriate. TLAP or the contract participant may terminate the monitoring agreement at any time.

(2) Voluntary Monitoring Agreement with reporting to a non-disciplinary authority.

A contract participant may request monitoring with reporting to a non-disciplinary authority as the reporting designee. The reporting designee will receive a copy of the monitoring agreement and may request a status report at any time. The reporting designee will be notified if the client becomes substantially noncompliant. The contract participant, reporting designee, or TLAP may terminate the agreement at any time. If TLAP or the contract participant terminates the agreement, the reporting designee will be notified immediately.

(3) Monitoring Agreement requiring mandatory reporting to disciplinary or licensing authority.

A disciplinary or licensing authority, such as the Board of Law Examiners, Board of Professional Responsibility, or Board of Judicial Conduct, may request TLAP to conduct an evaluation of a law student, attorney or judge. The request shall be in writing from the disciplinary authority or licensing authority to both TLAP and the referred attorney, and may be by court order. Following the evaluation, TLAP will provide the disciplinary or licensing authority with a written summary of TLAP's recommendations. If monitoring is recommended by TLAP, the disciplinary or licensing authority will be listed as the reporting designee. The disciplinary or licensing authority shall be notified if the referred law student, attorney or judge becomes substantially noncompliant with the terms of the agreement. The disciplinary or licensing authority may request a status update concerning substantial noncompliance at any time. TLAP shall provide an affidavit upon request of any party to the proceedings. Upon conclusion of a proceeding of any licensing or disciplinary authority, the monitoring agreement shall end, unless continued monitoring is specifically required in writing for a specified period of time following the conclusion of a proceeding. [As amended by order filed February 26, 2013, effective March 1, 2013.]

33.06. Referrals.

A. Self-referral. Any member of the legal profession may seek assistance from TLAP.

B. Other Referrals. TLAP shall receive referrals concerning any member of the legal profession from family members, colleagues, friends, law firms or any other source.

33.07. Referrals From Board of Professional Responsibility, Board of Judicial Conduct, Board of Law Examiners or Other Disciplinary Agencies.

A. Referrals. TLAP may accept referral of lawyers, judges or bar applicants under investigational, provisional or probational status with the

Tennessee Board of Professional Responsibility, Tennessee Board of Judicial Conduct, Tennessee Board of Law Examiners or any disciplinary agency with disciplinary authority.

B. Progress Reports. When TLAP accepts a referral under Rule 33.07(A), which results in a recommendation for a monitoring agreement, with a disciplinary agency as a reporting party, TLAP shall provide progress reports or reports of substantial non-compliance. Notwithstanding Rule 33.10, these reports may be used as evidence in any proceeding or appeal relating to such referral from the Tennessee Board of Professional Responsibility, the Tennessee Board of Judicial Conduct, the Tennessee Board of Law Examiners or a disciplinary agency with disciplinary authority. [As amended by order filed April 25, 2006, effective July 1, 2006; and by order filed February 26, 2013, effective March 1, 2013.]

33.08. Local Impaired Lawyer Assistance Programs. Subject to this rule and approval by TLAP, any bar association or other approved entity may establish an impaired lawyer program for the purpose of assisting lawyers with substance abuse problems, mental illness, or other impairments that may affect the lawyer's professional conduct. These programs are not agents of TLAP and have no authority to bind TLAP by their actions. Such approved programs shall operate as follows:

A. The program shall be governed by a committee which consists of not less than five (5) members, one of whom shall be designated as chair and one as vice-chair.

B. No member of the impaired lawyer program shall be a member of a district committee of the Board of Professional Responsibility of the Tennessee Supreme Court.

C. The program may investigate and evaluate allegations of substance abuse or mental impairment brought to its attention. Should the investigation or evaluation indicate that the lawyer does in fact suffer from substance abuse or mental impairment, the program may confer with the lawyer who is the subject of such allegation and make a recommendation to such lawyer. Such recommendation may include the sources of help for such problems.

D. The program may create and facilitate lawyer support groups and meetings.

E. The program shall provide peer assistance only and shall not accept referrals for monitoring as a probationary or provisional condition imposed upon a lawyer by any court or disciplinary authority. The program shall refer lawyers in need of monitoring to TLAP. However, any monitoring contract executed by a local impaired lawyer program prior to the effective date of this amendment may continue until the end of the term of the contract.

F. The program shall maintain statistics of the number of referrals it receives. These statistics shall be reported in writing to the Director of the Tennessee Lawyers Assistance Program not later than July 31 of each calendar year. [As amended by order filed April 25, 2006, effective July 1, 2006.]

33.09. Revolving Loan Fund.

A. From the funds received under Rule 33.01(C)(2), TLAP may establish a revolving loan fund. Such fund shall be made available to impaired lawyers and judges under rules and regulations established by the Commission, as a low interest loan either for the purpose of maintaining client obligations or for defraying the cost of treatment.

B. Upon a resolution adopted by vote of the Commission chair and a majority in number of the other members of the Commission serving current terms at the time of such resolution, and delivery of a copy of such resolution to the Supreme Court with written certification of its authenticity by the secretary of the Commission, the Commission may in its sole discretion transfer all or any portion of the loan funds referred to in subparagraph 33.09(A) above, together with other assets directly incidental thereto, to an independent supporting organization (the "Supporting Organization") established pursuant to Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), provided that the following conditions are met:

(1) The Supporting Organization must be a corporation duly organized and in good standing under the Tennessee Nonprofit Corporation Act.

(2) The Supporting Organization must have received approval from the Internal Revenue Service as exempt from taxation under Section 501(c)(3) of the Code, and be structured as a "public charity" and "Type 2" supporting organization thereunder.

(3) The Supporting Organization's charter must provide that it is organized to support TLAP and will engage solely in activities which support or benefit TLAP. These activities include (without limitation) administration of the loan funds transferred to and/or subsequently acquired by it; solicitation and acceptance of charitable contributions for addition to pre-existing loan funds; financing the participation of TLAP clients, Commissioners, and staff in mission-relevant activities requiring payment of fees and/or incurrence of expense (such as the event currently known as "Camp TLAP" and activities of the American Bar Association Commission on Lawyer Assistance Programs); and such other activities reasonably deemed beneficial to the recovery of Tennessee lawyers, law students, bar admission applicants, and Judges from impairments that jeopardize their well-being, clients, or the administration of Justice.

(4) The Supporting Organization's charter and bylaws (if applicable) must provide that a majority in number of its board of directors must be comprised of persons who, throughout their term on such board, are also members of the TLAP Commission serving current terms as such.

(5) The Supporting Organization's charter must provide that it will keep all books and records and make all governmental filings required to maintain its good corporate standing and tax-exempt qualifications under applicable Tennessee and federal law; that it will keep such books of accounts including any financial statements compiled therefrom in conformity with accounting principles applicable to it (which if otherwise compliant need not be the same accounting principles or practices employed by the State of Tennessee with respect to the TLAP Commission itself); and that it will timely provide the Supreme Court with materially accurate and complete annual and quarterly

statements of its assets, liabilities, income, and expenses for the period reported therein, and promptly furnish the Court with any and all other information relating to its operations which the Court may direct from time to time.

The certified copy of the resolution delivered to the Supreme Court to effectuate the funds transfer prescribed in this subparagraph 33.09(B) shall be duplicated and also provided to the Administrative Office of the Courts, together with identification of the bank account or accounts of the Supporting Organization to which the affected loan funds are to be transferred. Promptly upon receipt of such documents and information, the Administrative Office of the Courts shall, under authority of this Rule 33.09, transfer such funds by check or electronic means to the designated account(s).

The TLAP Commission may likewise assign, endorse (without recourse) and transfer to the Supporting Organization all assets constituting and/or directly related to transferred loan funds and loan program operations, including (without limitation) accounts receivable, promissory notes, security agreements, physically possessed collateral, payment records, loan applications and files, loan underwriting information, records of Commission loan committee approval and other relevant action, correspondence regarding default, modification and extension agreements, contracts with outside collection firms, and copies of cross-defaulting Monitoring Agreements. The Supporting Organization shall assume the Commission's liability, if any, with respect to the funding of any loan which the Commission has committed to a borrower or directly-paid provider (such as a treatment center) to fund but not yet funded at the time of the associated loan transfer, provided the Supporting Organization has received cash sufficient to perform such funding itself.

The TLAP Commission may, in its discretion, permit its staff members to assist the Supporting Organization in its mission and operations on any basis which does not impair any staff member's performance of his or her duties to the Commission or TLAP programming and does not cause any violation of any policy of the Court or the State of Tennessee requiring in substance that employees devote full time and attention to their duties as such. The TLAP Commission also may, in its discretion, permit the Supporting Organization to utilize the facility referred to in Rule 33.12 so long as such use does not impair TLAP's continuing operations or constitute or cause a breach of any lease agreement to which the Commission is either directly or indirectly a party.

All information received or generated by the Supporting Organization and its directors, officers, employees, and persons volunteering service in its operations shall be included in the scope of the confidentiality provisions in Rule 33.10; and all such persons shall be entitled to the immunity prescribed in Rule 33.11.

No funds transferred pursuant to this Rule 33.09(B) shall be or be deemed as, or have any relation to, the funds referred to in Rule 33.01(C)(1). [Amended by order filed and effective November 28, 2018.]

33.10. Confidentiality.

A. Information and actions taken by TLAP or by local impaired lawyer assistance programs approved under Rule 33.08 shall be privileged and held in

strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of TLAP or the local impaired lawyer assistance program approved under Rule 33.08, unless such disclosure is authorized by the member of the legal profession to whom it relates or as provided in Rule 33.07(B). Except as provided in Rule 33.07(B), such information and actions shall be excluded as evidence in any complaint, investigation or proceeding before the Tennessee Board of Professional Responsibility, Tennessee Board of Judicial Conduct, Tennessee Board of Law Examiners or other disciplinary agency with jurisdiction.

B. Commission members, employees, and agents, including volunteers recruited under Rule 33.04, and committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Section 33.08, shall be deemed to be participating in “a lawyers assistance program approved by the Tennessee Supreme Court” as provided in Tenn. Code Ann. § 23-4-103(1) and all information furnished to the program shall be governed by Tenn. Code Ann. §§ 23-4-104 and 23-4-105. [As amended by order filed April 25, 2006, effective July 1, 2006; and by order filed February 26, 2013, effective March 1, 2013.]

33.11. Immunity.

A. Any person reporting information to Commission members, employees or agents, including volunteers recruited under Rule 33.04, or to committee members, employees, or agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, shall be entitled to the immunities and presumptions under Tenn. Code Ann. §§ 23-4-101, 23-4-102 and 23-4-103 and the immunity provided under Rule 9, Section 17.

B. Commission members, employees and agents, including volunteers recruited under Rule 33.04, as well as committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, shall be entitled to the immunities and presumptions under Tenn. Code Ann. §§ 23-4-101, 23-4-102 and 23-4-103 and the immunity provided under Rule 9, Section 17.

C. Commission members, employees and agents, including volunteers recruited under Rule 33.04, and committee members, employees, and agents, including volunteers of local impaired lawyer assistance programs approved under Rule 33.08, are relieved of any duty of disclosure of information to authorities imposed by Tennessee Supreme Court Rule 8, RPC 8.3(a). [As amended by order filed August 27, 2002, effective March 1, 2003; and by order filed April 25, 2006, effective July 1, 2006; and by order filed August 18, 2014, effective upon filing.]

33.12. Facility. The TLAP office shall be so located as to be consistent with the privacy and confidentiality requirements of this rule.

33.13. Program review. TLAP shall be reviewed annually by the Tennessee Supreme Court and shall remain in full force and effect until otherwise ordered by the Tennessee Supreme Court. [Added by order filed January 7, 1999; and amended by order filed December 7, 2006.]

Compiler's Notes. In its order filed August 30, 2010, the Supreme Court provided that: "Tenn. Sup. Ct. R. 33.11(C) ('paragraph C') relieves specified individuals serving in a lawyer assistance program of any duty of disclosure imposed by Tenn. Sup. Ct. R. 8, RPC 8.3(a), pertaining to required disclosures of information to the Disciplinary Counsel of the Board of Professional Responsibility. It has come the Court's attention that paragraph C does not relieve those individuals of any duty of disclosure imposed by RPC 8.3(b), pertaining to required disclosures of information to the Disciplinary Counsel of the Court of the Judiciary. It appearing that the omission of a reference to RPC 8.3(b) in paragraph C was due to oversight, see Tenn. Sup. Ct. R. 8, RPC 8.3(c), the Court is considering an amendment of paragraph C to correct that omission. Accordingly, the Court proposes amending Tenn. Sup. Ct. R. 33.1 1(C) by adding 'or (b)' to the end of that paragraph; the full text of the proposed amended Tenn. Sup. Ct. R. 33.11(C) is set out in the attached Appendix.

"The Court hereby publishes the proposed amendment for public comment. The Court solicits written comments from judges, lawyers, bar organizations, members of the public, and any other interested parties. The deadline for submitting written comments is September 27, 2010. Written comments should be addressed to: Michael W. Catalano, Clerk, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, TN 37219-1407, with the case number [M2010-01812-SC-RL2-RL] noted on the correspondence."

In its order filed October 15, 2012, the Supreme Court provided that: "On September 6, 2012, the Commission of the Tennessee Lawyer Association Program ('Commission') filed a petition asking the Court to amend Rule 33, Sections 33.02, 33.05, and 33.07 of the Rules of the Tennessee Supreme Court.

"The Court hereby publishes the Commission's proposed amendments for public comments and solicits written comments from the bench, the bar, and the public. Written comments shall be received by the Clerk no later than Friday, November 30, 2012. Written comments should be addressed to: Mike Catalano, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN, 37219-1407, and should reference the docket number [M2012-01897-SC-RL1-RL]."

The proposed amendment to Rule 33.02 promulgated by the Supreme Court in its order dated October 15, 2012, would add the second sentence to (E) to read: "The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work

of the Commission." and would add (F) to read: "**Advisory Committees:** The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate."

In its order filed October 15, 2012, the Supreme Court provided that: "On September 6, 2012, the Commission of the Tennessee Lawyer Association Program ('Commission') filed a petition asking the Court to amend Rule 33, Sections 33.02, 33.05, and 33.07 of the Rules of the Tennessee Supreme Court.

"The Court hereby publishes the Commission's proposed amendments for public comments and solicits written comments from the bench, the bar, and the public. Written comments shall be received by the Clerk no later than Friday, November 30, 2012. Written comments should be addressed to: Mike Catalano, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN, 37219-1407, and should reference the docket number [M2012-01897-SC-RL1-RL]."

The proposed amendment to Rule 33.05 promulgated by the Supreme Court in its order dated October 15, 2012, would add the final sentence to (E) to read: "There are three types of monitoring agreements." and would add (1), (2), and (3) to read:

"(1) Voluntary Monitoring Agreement with no reporting party listed in the agreement. The contract participant may request from TLAP letters of compliance addressed to the contract participant for the participant to provide to outside sources as he or she deems appropriate. TLAP or the contract participant may terminate the monitoring agreement at any time.

"(2) Voluntary Monitoring Agreement with reporting to a non-disciplinary authority. A contract participant may request monitoring with reporting to a non-disciplinary authority. The reporting designee will receive a copy of the monitoring agreement and may request a status report at any time. The reporting designee will be notified if the client becomes substantially noncompliant. The contract participant, reporting designee, or TLAP may terminate the agreement at any time. If TLAP or the contract participant terminates the agreement, the reporting designee will be notified immediately.

"(3) Monitoring Agreement requiring mandatory reporting to disciplinary or licensing authority. A disciplinary or licensing authority, such as the Board of Law Examiners, Board of Professional Responsibility, or Court of Judiciary, may request TLAP to conduct an evaluation of a law student, attorney, or judge. The request shall be in writing from the disciplinary authority to both TLAP and the referred attorney, and may be by court order. Following the evaluation, TLAP will provide the disciplin-

ary or licensing authority with a written summary of TLAP's recommendations. If monitoring is recommended by TLAP, the disciplinary or licensing authority shall be notified if the referred law student, attorney or judge becomes substantially noncompliant with the terms of the agreement. The disciplinary or licensing authority may request a status update concerning substantial noncompliance at any time. TLAP shall provide an affidavit upon request of any party to the proceedings. Upon conclusion of a proceeding of any licensing or disciplinary authority, the monitoring agreement shall end, unless continued monitoring is specifically required in writing for a specified period of time following the conclusion of a proceeding."

In its order filed October 15, 2012, the Supreme Court provided that: "On September 6, 2012, the Commission of the Tennessee Lawyer Association Program ('Commission') filed a petition asking the Court to amend Rule 33, Sections 33.02, 33.05, and 33.07 of the Rules of the Tennessee Supreme Court.

"The Court hereby publishes the Commission's proposed amendments for public comments and solicits written comments from the bench, the bar, and the public. Written comments shall be received by the Clerk no later than Friday, November 30, 2012. Written comments should be addressed to: Mike Catalano, Clerk, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN, 37219-1407, and should reference the docket number [M2012-01897-SC-RL1-RL]."

The proposed amendment to Rule 33.07 promulgated by the Supreme Court in its order dated October 15, 2012, would rewrite the first sentence of (B) to read: "When TLAP accepts a referral under Rules 33.07(A), which results in

a recommendation for a monitoring agreement, with a disciplinary agency as a reporting party, TLAP shall provide progress reports of substantial non-compliance."

In its order filed August 30, 2013, the Supreme Court provided: "On August 30, 2013, the Court adopted revised Tenn. Sup. Ct. R. 9, effective January 1, 2014. The Court has determined that certain revisions are necessary to Tenn. Sup. Ct. R. 21, 33, and 43 in order to make those Rules consistent with revised Tenn. Sup. Ct. R. 9.

"After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 21, 33, and 43 as set out in the attached Appendix to this Order. The effective date of these amendments is January 1, 2014."

The order amended Rule 33, § 33.01 C(1), effective January 1, 2014, to read:

"C. Funding and Administration.

"(1) For the purpose of funding the program established under this rule, the Board of Professional Responsibility shall collect annually and deposit with the State Treasurer an annual fee from every attorney, in an amount set by the Court in Rule 9, Section 10.2(c)."

In its order filed November 28, 2018, the Supreme Court provided that: "On October 17, 2018, the Court filed an Order soliciting public comments on proposed amendments to Rule 33 of the Rules of the Tennessee Supreme Court. The deadline for submitting written comments was November 19, 2018. The Court received three written comments during the comment period, each in support of the proposed amendments.

"After due consideration, the Court hereby adopts the amendments to Rule 33 of the Rules of the Tennessee Supreme Court as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Rule 34. Public Access to Court Records.

(1) **Right to Inspect Public Records.** The public has a statutory right to inspect public records maintained by government agencies. Accordingly, the public has the right to inspect public records maintained by the courts of this State unless the record is expressly excepted from inspection under the Public Records Act, *see* Tenn. Code Ann. § 10-7-504; or unless otherwise provided by state law, including this Rule and other rules of court, *see* Tenn. Code Ann. § 10-7-503(a)(2)(A). Requests to inspect public records maintained by the courts are, however, subject to reasonable requirements and restrictions intended to preserve the integrity of the record, the parties' right to the record for the purpose of preparing their papers, the courts' deliberative process, and the efficient operation of the courts in accordance with Tenn. Code Ann. § 16-3-401.

(2) **Court Records.** (A) For the purposes of this Rule and the public records policies promulgated by the courts, a "record" includes any record

defined as a “public record” in Tenn. Code Ann. § 10-7-503(a)(1)(A).

(B) Court Records include Case Records, Administrative Records, and Judicial Records.

(i) Case Record means any record created, collected, received, or maintained by the courts as a part of the official court file in connection with a particular case.

(ii) Administrative Record means any record created, collected, received, or maintained by the courts pertaining to the administration of the courts and not associated with a particular case.

(iii) Judicial Record means any record of the courts other than Case Records or Administrative Records.

(C) The following Court Records shall be treated as confidential and shall not be open for inspection by members of the public:

(i) Documents expressly excepted from inspection under the Public Records Act, Tennessee Code Annotated section 10-7-504, or otherwise excepted from inspection under state law, Tenn. Code Ann. § 10-7-503(a)(2)(A);

(ii) Documents protected from disclosure by order or rule of court, including but not limited to documents sealed pursuant to an order of the court or the subject of a protective order;

(iii) Unpublished drafts of judicial orders and opinions;

(iv) Copies, unless intentionally filed as part of the Case Record, of motions, petitions, briefs, and other similar documents filed with the clerks of the courts that have been furnished to a judge or his or her individual use;

(v) Written or electronic conference records, notes, memoranda, reports, or other documents of a similar nature prepared by a judge, judicial staff, or the Administrative Office of the Courts on behalf of, or at the direction of, a the court or judge. This includes written or electronic records, notes, memoranda, reports, or other documents of a similar nature created or received as a part of a court’s the judicial or administrative deliberative process unless intentionally filed as part of the Case Record;

(vi) All internal case management information except for information concerning the composition of appellate case panels assigned to consider a particular case;

(vii) Information maintained by individual judges with regard to their recusal from particular cases unless the information is intentionally filed as part of the Case Record or unless it is subject to disclosure pursuant to Tenn. Code Ann. §§ 8-50-501, 8-50-506 or Tenn. S. Ct. R. 10; and

(viii) Any other written or electronic record the disclosure of which would frustrate or interfere with the judicial function of the courts or potentially undermine the inherent constitutional powers granted the court, in addition to the powers recognized in Tennessee Code Annotated sections 16-3-501 through 16-3-504. (Amended by order filed September 15, 2017, effective immediately.)

Compiler’s Notes. In its order filed September 15, 2017, the Supreme Court provided: “By Order filed February 22, 2017, the Court solicited public comment regarding proposed amendments to Rule 34 of the Rules of the Tennessee Supreme Court. The Court has re-

ceived comments from the Tennessee Bar Association (“TBA”), the Knoxville Bar Association (“KBA”), the Tennessee Association of Broadcasters (“TAB”), attorney Richard Hollow, and court reporter Sheila Wilson. The Court has carefully considered the comments received

and thanks the TBA, the KBA, the TAB, Mr. Hollow, and Ms. Wilson for the same.”

“After due consideration, the Court hereby amends Rule 34 of the Rules of the Tennessee Supreme Court in the form set out in Appendix A to this Order. The Amendments to this Rule shall be effective immediately.”

Law Reviews. Enabling the Gaze: Public Access and the Withdrawal of Tennessee’s Proposed Rule of Civil Procedure 1A (Albert Louis Chollet III), 36 U. Mem. L. Rev. 695 (2006).

COMMENTS TO OFFICIAL TEXT

[1] Sections three (3) through six (6) of Rule 34 have been omitted. Consistent with the Public Records Act, Tennessee Code Annotated section 10-7-503(g), the Court has promulgated a separate written public records policy applicable to the appellate courts of this State, which includes the following: the process for making re-

quests to inspect public records or receive copies of public records of the appellate courts; the process for appellate courts responding to requests, including redaction practices; a statement of any fees charged for copies of public records of the appellate courts and the procedures for billing and payment; and the name or title and the contact information of the individual or individuals within the appellate courts designated as the public records request coordinator. The trial courts similarly shall promulgate written public records policies pursuant to the Public Records Act, Tennessee Code Annotated section 10-7-503(g).

[2] The reference in section (C)(ii) of this Rule to “rule of court” is not intended to and does not include local rules of the trial courts.

NOTES TO DECISIONS

1. Request Denied.

In a case in which petitioner sought access to the audio recordings of his post-conviction hearing pursuant to the Tennessee Public Records Act, the judge properly denied his request because the recordings were made to aid the court reporter in generating the official transcript and the recordings constituted electronic records created as part of the court’s judicial

process, the disclosure of which would frustrate or interfere with the judicial function of the court; and the record reflected that petitioner was provided with a copy of the official transcript that was certified by the trial court. *State ex rel. Wilson v. Gentry*, — S.W.3d —, 2020 Tenn. App. LEXIS 397 (Tenn. Ct. App. Sept. 2, 2020).

Rule 35. Standard Format for Appellate Court Opinions and Orders.

(a) All papers prepared for filing by the Supreme Court, the Court of Appeals, and the Court of Criminal Appeals, or any justice or judge thereof, shall be on 8½ by 11 inch paper. This requirement applies to opinions, orders, judgments, mandates, and other similar documents.

(b) In addition to the requirements in subsection (a), all opinions and orders prepared for filing by the Supreme Court, the Court of Appeals, and the Court of Criminal Appeals, or any justice or judge thereof, shall use the standard format approved by this Court for use by all appellate courts. The introductory paragraph, prepared by the appellate court and included at the beginning of an opinion issued in the standard format, is an official part of the opinion.

(c) The briefs and other papers filed by the parties in the appellate courts shall continue to be governed by Tenn. R. App. P. 30.

(d) This rule shall apply to all papers prepared by Tennessee’s appellate courts for filing on or after April 1, 2000.

Law Reviews. What’s happening with e-filing in Tennessee? (Judge William C. Koch Jr.), 37 No. 3 Tenn. B.J. 26 (2001).

Rule 36. Standard Paper Size for Tennessee State Courts.

(a) All pleadings, motions, and other papers presented for filing with the clerk or intended for the use of the court shall be upon letter size (8½ x 11 inches) opaque, unglazed white paper, and

(1) shall be clearly and legibly handwritten in blue or black ink or shall be typewritten or printed in black ink using type not smaller than 12 points in type face essentially equivalent to Times New Roman or Helvetica;

(2) shall be handwritten or printed on one side of the paper only with a top margin of at least one inch, and the lines on each page shall be at least 1½ spaced except for descriptions of real property, quotations, footnotes, and similar items, which may be single spaced and indented; and

(3) shall, if consisting of more than one page, have each consecutive page numbered at the bottom center of the page.

(b) Pre-printed forms used by the court shall comply with the requirements stated in subparagraph (a) except that such forms may be single spaced, may be printed on both sides of the paper, and may use type smaller than 12 points so long as the print is clearly legible.

(c) Any exhibit or attachment filed with a pleading, motion, or other paper may be submitted in its original size; however, parties are encouraged to reduce or enlarge exhibits or attachments to letter size (8½ x 11 inches) paper if doing so does not impair legibility or clarity.

(d) No pleading, motion, or other paper shall be refused for filing because it does not comply with this rule. However, the clerk may require that a noncomplying pleading, motion, or other paper be resubmitted in compliance with this rule. The filing party shall submit the substituted pleading, motion, or paper within fifteen (15) days after its original filing and shall certify that the substituted pleading, motion, or paper is identical in content to the pleading, motion, or paper originally filed.

(e) This rule shall become effective on July 1, 2003 and shall apply to all state courts, including, without limitation: general sessions court, juvenile court, probate court, circuit court, chancery court, criminal court and the respective appellate courts. Prior to that date, pleadings, motions, and other papers presented for filing with the clerk or intended for the use of the court may be filed either on letter size (8½ x 11 inches) or legal size (8½ x 14 inches) paper.

Rule 37. [Repealed.]

Compiler's Notes. In its order filed March 2, 2011, the Supreme Court provided that: "In June 2001, the Court adopted Rule 37 [Provisional], Rules of the Tennessee Supreme Court, establishing a mandatory mediation program for appeals in workers' compensation cases. As originally adopted by the Court, Rule 37 was to be effective from September 1, 2001 until August 31, 2004. In August 2004, the Court extended the term of the program by one year, ending on August 31, 2005. In August 2005, the Court adopted a revised Rule 37; the revised rule, in pertinent part, ended the provisional status of the rule and provided that the rule

applied to all workers' compensation cases in which a notice of appeal was filed on or after September 1, 2001.

"In 2004, the General Assembly amended Tenn. Code Ann. § 50-6-225(a) [version applicable to injuries occurring prior to July 1, 2014; rewritten effective July 1, 2014] to provide that 'in case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and employee or the dependent(s) of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.' Thus, as

a result of the amended statute, the parties were required to participate in mediation (i.e., a Benefit Review Conference) prior to the filing of a workers' compensation civil action. Rule 37, however, continued to require the parties to also engage in appellate mediation following the filing of a notice of appeal.

"Section 12 of Rule 37 provides, in pertinent part: 'the efficacy of the procedures outlined herein [in Rule 37] shall be subject to evaluation by the Court.' Consistent with Section 12, the Court tentatively concluded that requiring a second mediation as a part of the appeal process was unduly burdensome on the litigants. On November 17, 2010, the Court filed an order stating that the Court was considering the repeal of Rule 37 in its entirety, thereby cancelling the mandatory appellate mediation program established by the rule; the order

solicited written comments on the proposed repeal of Rule 37 and set January 18, 2011 as the deadline for submitting written comments.

"After due consideration, the Court hereby repeals Rule 37 in its entirety, effective upon the filing of this order. For all pending appeals governed by Rule 37, but in which the mediation process was not completed as of the filing of this order, the mediation process may be terminated, and the mediator and the parties are relieved of their responsibility to make any post-mediation filing previously required by Tenn. Sup. Ct. R. 37, § 11. The repeal of Rule 37 does not relieve the parties of their liability for payment of the cost of services rendered by a mediator pursuant to the Rule; Rule 37, § 10 shall be deemed to continue to apply to all cases in which such payment has not been made as of the filing of this order."

Rule 38. Divorcing Parent Education and Mediation Fund. Preamble.

The Tennessee Legislature enacted Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated to promote continuing parenting arrangements for families involved in divorce, legal separation, annulment, or separate maintenance proceedings, and for families that are involved in any other custody matters. Such arrangements reinforce the fundamental importance of the parent-child relationship to the welfare of the child. In order to help parents receive the necessary education and alternative dispute resolution services, the Tennessee Legislature established the Divorcing Parent Education and Mediation Fund (Tenn. Code Ann. § 36-6-413). The Administrative Office of the Courts is charged with the distribution of the moneys in the Fund to or for the benefit of each judicial district to provide education and mediation for indigent parents and the administration of those services. The present Rule sets forth the qualifications and processes for the appointment, compensation, and payment of the reasonable expenses of alternative dispute resolution neutrals and education providers serving indigent parents involved in absolute divorce, legal separation, annulment, or separate maintenance proceedings, and any other custody matters. [As amended by order filed September 6, 2006, effective September 6, 2006.]

Sec. 1. Application. The following Rule shall be applicable to the distribution of moneys in the Divorcing Parent Education and Mediation Fund established and funded under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated. The moneys shall be used to reimburse the providers of parenting education and alternative dispute resolution services where those services have been provided to indigent parents and to pay for the costs of administering the parenting plan law in the various judicial districts. The moneys distributed in accordance with this rule shall come solely from those moneys in the Divorcing Parent Education and Mediation Fund. The Administrative Office of the Courts has neither the authorization nor the means for supplementing the moneys in the Divorcing Parent Education and Mediation Fund beyond the processes set forth under Title 36, Chapter 6, Part 4 of the

Tennessee Code Annotated. Upon depletion of the Divorcing Parent Education and Mediation Fund, and until additional moneys become available under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated, no further moneys will distributed under this rule.

Sec. 2. Alternative dispute resolution services.

(a) Qualified Neutrals. Qualified Neutrals are those alternative dispute resolution neutrals who meet the requirements of Tennessee Supreme Court Rule 31. Qualified Neutrals shall be selected by the parties or the court in accordance with Rule 31 and Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated.

(b) Reimbursement. Qualified Neutrals shall be reimbursed for those reasonable alternative dispute resolution services rendered and expenses incurred provided by court order under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated to indigent parents.

(c) Maximum fee. (1) **Services Rendered.** Qualified Neutrals who receive moneys under this rule shall be limited to a maximum fee of \$50.00 per hour (\$25.00 per parent per hour) for time reasonably spent in actual alternative dispute resolution sessions with the parents ("in-session time") and \$40.00 per hour (\$20.00 per parent per hour) for time reasonably spent in preparation for the alternative dispute resolution sessions and for time reasonably spent in preparing agreements or proposed agreements reached during the alternative dispute resolution sessions ("out-of-session time"), a portion of which may be reimbursed from the Divorcing Parent Education and Mediation Fund. The total number of hours that may be reimbursed from the Divorcing Parent Education and Mediation Fund shall not exceed ten (10) hours in aggregate for both in-session and out-of-session time.

(2) **Expenses Incurred.** A Qualified Neutral shall be reimbursed for certain necessary expenses incurred directly in the rendering of the alternative dispute resolution process.

(i) Expenses for long distance telephone calls, copying, printing, and travel within the state, approved by the court as reasonably necessary, will be reimbursed. Claims for reimbursement for long distance telephone calls must be supported by a log showing the date the call was made, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth ($\frac{1}{10}$) hour segments. Travel within the state will be reimbursed in accordance with Judicial Department travel regulations.

(ii) A Qualified Neutral may not be reimbursed for the services of a lawyer, other Qualified Neutral, other alternative dispute resolution neutral, paralegal, law clerk, secretary, legal assistant or other administrative assistants.

(d) Referral to alternative dispute resolution. Upon motion by either of the parties or upon its own motion, the court may refer the parties to an alternative dispute resolution process as set forth in Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated.

(e) Motion for reduced fee alternative dispute resolution. At the time of referral to the alternative dispute resolution process, either party may move to pay no fee or a reduced fee for the alternative dispute resolution process. Whenever a party informs the court that such party is financially unable to

afford the alternative dispute resolution process, the court may conduct a full and complete hearing as to the financial ability of the party to afford the alternative dispute resolution process, and, thereafter, make a finding as to the indigency of the party. All statements made by the party seeking to pay no fee or a reduced fee for the alternative dispute resolution process shall be by sworn testimony in open court or written affidavit sworn to before the judge. When making a finding as to the indigency of a party, the court shall take into consideration:

- (1) the nature of the services to be rendered;
- (2) the usual and customary charges of a Qualified Neutral in the community for rendering like or similar services;
- (3) the income of the party regardless of source;
- (4) the poverty level income guidelines compiled and published by the United States department of labor;
- (5) the ownership or equity in any real or personal property; and
- (6) any other circumstances presented to the court which are relevant to the issue of indigency.

(f) Determination of fee reduction. The court shall then evaluate the motion, its accompanying statement, documentation, and affidavit, and sworn testimony to determine whether the parties shall pay no fee or a reduced fee for the alternative dispute resolution process. If the court finds the party is financially able to defray a portion or all of the cost of either party's alternative dispute resolution process, the court shall enter an order directing the party to pay to the Qualified Neutral or into the registry of the clerk of such court such sum as the court determines the party is able to pay. Such sum shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon such terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances of the party.

(g) Referral to pro bono alternative dispute resolution. Upon determination by the court that a no fee alternative dispute resolution process is appropriate for both parties, the court shall refer the parties by an Order of the court to the clerk of the court for referral to the appropriate Legal Service office as set forth in Tennessee Supreme Court Rule 11, Section VI, to arrange for a pro bono alternative dispute resolution process. In the event there is no Qualified Neutral available for the pro bono alternative dispute resolution process, the appropriate Legal Service office shall notify the court and the court shall refer the parties to a no fee or reduced fee alternative dispute resolution process as set forth below in this rule.

(h) Referral to alternative dispute resolution where one party is not determined to be indigent. Upon determination by the court that a no fee or reduced fee alternative dispute resolution process is appropriate for one party, but is not appropriate for the other party, the court shall refer the parties by an Order of the court to a Qualified Neutral, chosen by the parties or the court, for alternative dispute resolution. The court may require that the second party shall pay all or a portion of the fee of the first party as well as all of the fee of the second party to the Qualified Neutral. The Order shall be forwarded to the Qualified Neutral and it shall state the amount to be paid to the

Qualified Neutral or into the registry of the clerk of such court by each of the parties.

(i) Referral to reduced fee alternative dispute resolution. Upon determination by the court that a no fee or reduced fee alternative dispute resolution process is appropriate for either party, the court shall refer the parties by an Order of the court to a Qualified Neutral, chosen by the parties or the court, for alternative dispute resolution. The Order shall be forwarded to the Qualified Neutral and it shall state the amount to be paid to the Qualified Neutral or into the registry of the clerk of such court by the parties. Further, the Order shall have a claim form attached thereto for submission to the court by the Qualified Neutral for reimbursement of fees from the Divorcing Parent Education and Mediation Fund. The court shall use a claim form developed by the Administrative Office of the Courts and supplied to the court as needed.

(j) Filing claims by the Qualified Neutral. Upon conclusion of the alternative dispute resolution process, the Qualified Neutral shall file with the clerk of the court two (2) copies of the completed claim form supplied to the Qualified Neutral with the Order of the court. In addition, the Qualified Neutral shall attach a copy of the Order of the court to each of the claims to be filed. The claim form shall include a listing of all in-session and all out-of-session times reasonably spent by the Qualified Neutral in the alternative dispute resolution process. The Qualified Neutral will be held to a high degree of care in the keeping of records supporting all claims and in the claim form. A Qualified Neutral who receives payment pursuant to the terms of this rule, and who makes application for additional funds for expenses incurred and services rendered, shall report such payment in the claim form filed with the clerk of the court.

(k) Review of the claim by the Court. The court shall review the claim form filed by the Qualified Neutral and, upon approval of the claim form, shall forward one copy of the approved claim form and Order of the court to the Administrative Office of the Courts.

(l) Review of the claim by the Administrative Office of the Courts. The Administrative Office of the Courts shall examine and audit the claim form to insure compliance with these rules and other statutory requirements. After such examination and audit and giving due consideration to the Divorcing Parent Education and Mediation Fund, the Administrative Office of the Courts shall make a determination as to the compensation to be paid to the Qualified Neutral and cause payment to be issued in satisfaction thereof. The determination by the Administrative Office of the Courts shall be final.

Sec. 3. Parenting education services.

(a) Qualified Parenting Education Providers. Qualified Parenting Education Providers are those individuals or groups approved by the court to provide parenting education seminars in accordance with Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated.

(b) Reimbursement. Qualified Parenting Education Providers shall be reimbursed for those reasonable parenting education services rendered and expenses incurred provided by court order under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated to indigent parents.

(c) Maximum fee. Qualified Parenting Education Providers who receive moneys under this rule shall be limited to a maximum fee of \$25.00 per parent for time and materials reasonably spent in providing parenting education services, a portion of which may be reimbursed from the Divorcing Parent Education and Mediation Fund.

(d) Referral to reduced fee parenting education services. Upon one party filing in forma pauperis, the court shall refer that party by an Order of the court to a Qualified Parenting Education Provider, chosen by the party or the Court, for parenting education services. The Order shall be forwarded to the Qualified Parenting Education Provider and it shall state that the amount to be paid from the Divorcing Parent Education and Mediation Fund shall be not more than the amount set forth above in Section 3(c), Maximum Fee, of the present Rule. Further, the Order shall have a claim form attached thereto for submission to the court by the Qualified Parenting Education Provider for reimbursement of fees from the Divorcing Parent Education and Mediation Fund. The court shall use a claim form developed by the Administrative Office of the Courts and supplied to the court as needed.

(e) Referral to parenting education services where one party is not determined to be indigent. Upon only one party filing in forma pauperis, and the determination of the court that the other party is able to pay for the parenting education services, the court shall refer the parties by an Order of the court to a Qualified Parenting Education Provider, chosen by the parties or the court, for parenting education services. The court may require that the second party shall pay all or a portion of the fee of the first party as well as all of the fee of the second party to the Qualified Parenting Education Provider. The Order shall be forwarded to the Qualified Parenting Education Provider and it shall state the amount to be paid to the Qualified Parenting Education Provider or into the registry of the clerk of such court by each of the parties.

(f) Filing a claim by the Qualified Parenting Education Provider.

Upon conclusion of the parenting education service, the Qualified Parenting Education Provider shall file with the Administrative Office of the Courts two (2) copies of the completed claim form supplied to the Qualified Parenting Education Provider with the Order of the Court. The Qualified Parenting Education Provider may submit a single claim form for the claims for parenting education services for more than one parent referred under this rule. In addition to the copies of the completed claim form, the Qualified Parenting Education Provider shall attach a copy of each Order of the court and a copy of each certificate of completion of the parenting education seminar to the claim form filed. The claim form shall include a listing of all parenting education services and materials provided by the Qualified Parenting Education Provider in the parenting education services. The Qualified Parenting Education Provider will be held to a high degree of care in the keeping of records supporting all claims and in the claim form. A Qualified Parenting Education Provider who receives payment pursuant to the terms of this rule, and who makes application for additional funds for expenses incurred and services rendered, shall report such payment in the claim form filed with the Administrative Office of the Courts.

(g) Review of the claim by the Administrative Office of the Courts.

The Administrative Office of the Courts shall examine and audit the claim

form to insure compliance with these rules and other statutory requirements. After such examination and audit and giving due consideration to the Divorcing Parent Education and Mediation Fund, the Administrative Office of the Courts shall make a determination as to the compensation to be paid to the Qualified Parenting Education Provider and cause payment to be issued in satisfaction thereof. The determination by the Administrative Office of the Courts shall be final.

Rule 39. Exhaustion of Remedies. In all appeals from criminal convictions or post-conviction relief matters from and after July 1, 1967, a litigant shall not be required to petition for rehearing or to file an application for permission to appeal to the Supreme Court of Tennessee following an adverse decision of the Court of Criminal Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the Court of Criminal Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim. On automatic review of capital cases by the Supreme Court pursuant to Tenn. Code Ann., § 39-13-206, a claim presented to the Court of Criminal Appeals shall be considered exhausted even when such claim is not renewed in the Supreme Court on automatic review.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Review.
3. Retroactivity.
4. Effect on Federal Proceedings.

1. Constitutionality.

Decision by the Tennessee supreme court to pass Tenn. Sup. Ct. R. 39 does not violate the Supremacy Clause, U.S. Const. art. VI, because the United States supreme court has not yet explicitly decided whether a rule like Tenn. Sup. Ct. R. 39 would remove state supreme court review for habeas purposes, and the question of what constitutes the body of "available state remedies" is one of state law, not one of federal law; therefore, there is no "actual conflict" between Tenn. Sup. Ct. R. 39 and federal law. *Adams v. Holland*, 324 F.3d 838, 2003 FED App. 152A, 2003 U.S. App. LEXIS 9614 (6th Cir. Tenn. 2003), cert. denied, 541 U.S. 956, 124 S. Ct. 1654, 158 L. Ed. 2d 392, 2004 U.S. LEXIS 2332, 72 U.S.L.W. 3599 (2004).

District court erred when it denied the inmate's habeas petition based on its belief that Tennessee law required the inmate to raise his prosecutorial misconduct claims in order to adequately exhaust his state court remedies; the Tennessee supreme court's subsequent promulgation of Tenn. Sup. Ct. R. 39, however, rendered that conclusion erroneous since because Tenn. Sup. Ct. R. 39 only clarified the

law, and did not change the law, it was inescapable that the district court committed a legal error. *Abdur'Rahman v. Bell*, 493 F.3d 738, 2007 FED App. 264P, 2007 U.S. App. LEXIS 16710 (6th Cir. July 13, 2007).

2. Review.

Tenn. Sup. Ct. R. 39 renders Tennessee supreme court review "unavailable" in the context of habeas relief. *Adams v. Holland*, 324 F.3d 838, 2003 FED App. 152A, 2003 U.S. App. LEXIS 9614 (6th Cir. Tenn. 2003), cert. denied, 541 U.S. 956, 124 S. Ct. 1654, 158 L. Ed. 2d 392, 2004 U.S. LEXIS 2332, 72 U.S.L.W. 3599 (2004).

3. Retroactivity.

Language of Tenn. Sup. Ct. R. 39, which indicates that it was merely clarifying the state of Tennessee law as it had existed since 1967, not changing the law of available state remedies, and the history of Tenn. Sup. Ct. R. 39 shows that it applies retroactively. *Adams v. Holland*, 324 F.3d 838, 2003 FED App. 152A, 2003 U.S. App. LEXIS 9614 (6th Cir. Tenn. 2003), cert. denied, 541 U.S. 956, 124 S. Ct. 1654, 158 L. Ed. 2d 392, 2004 U.S. LEXIS 2332, 72 U.S.L.W. 3599 (2004).

Because Tenn. Sup. Ct. R. 39 applied retroactively to the prisoner's case, the prisoner's Confrontation Clause issue was not procedurally defaulted by his failure to bring it before the Tennessee supreme court. *Adams v. Hol-*

land, 324 F.3d 838, 2003 FED App. 152A, 2003 U.S. App. LEXIS 9614 (6th Cir. Tenn. 2003), cert. denied, 541 U.S. 956, 124 S. Ct. 1654, 158 L. Ed. 2d 392, 2004 U.S. LEXIS 2332, 72 U.S.L.W. 3599 (2004).

4. Effect on Federal Proceedings.

Tennessee Supreme Court's promulgation of Tenn. Sup. Ct. R. 39, which clarified that litigants need not appeal criminal convictions or post-conviction relief actions to the Tennessee Supreme Court to exhaust their appeals, was an extraordinary circumstance excusing procedural default for petitioner death row inmate not appealing four ineffective assistance of counsel claims to the Tennessee Supreme

Court, and since when the rule was promulgated, any Fed. R. Civ. P. 60(b) motion to reopen the inmate's original habeas petition would have been considered a successive habeas petition, the inmate's Rule 60(b)(6) motion should not have been dismissed and the ineffective counsel claims should have been heard on the merits. *Thompson v. Bell*, 580 F.3d 423, 2009 FED App. 332P, 2009 U.S. App. LEXIS 20246 (6th Cir. Sept. 11, 2009), rehearing denied, — F.3d —, — FED App. (6th Cir.) —, 2010 U.S. App. LEXIS 821 (6th Cir. Jan. 12, 2010), cert. denied, 562 U.S. 831, 131 S. Ct. 102, 178 L. Ed. 2d 29, 2010 U.S. LEXIS 6464 (U.S. 2010), overruled in part, *State v. Irick*, 320 S.W.3d 284, 2010 Tenn. LEXIS 872 (Tenn. 2010).

Rule 40. Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.

(a) **Application.** These Guidelines set forth the obligations of lawyers appointed to represent children as guardians ad litem only in juvenile court neglect, abuse and dependency proceedings pursuant to Tenn. Code Ann. § 37-1-149, Rules 37 of the Tennessee Rules of Juvenile Procedure, and Supreme Court Rule 13. By adoption of these guidelines it is intended that they not be applied to proceedings in other courts that involve child custody or related issues.

(b) Definitions.

As used in this rule, unless the context otherwise requires:

(1) "Guardian ad litem" is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child's concerns and preferences are effectively advocated.

(2) "Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

(i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care;

(ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;

(iii) the child's need for family affiliation;

(iv) the child's social needs;

(v) the child's educational needs;

(vi) the child's vulnerability and dependence upon others;

(vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;

(viii) degree of risk;

(ix) the child's need for stability of placement;

(x) the child's age and developmental level, including his or her sense of time;

(xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;

(xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;

(xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;

(xiv) the importance of continuity in the child's life;

(xv) the home, school and community record of the child;

(xvi) the preferences of the child;

(xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and

(xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in Tenn. Code Ann. § 36-6-106.

(c) General Guidelines.

(1) The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.

(2) Establishing and maintaining a relationship with the child is fundamental to representation. The guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child's caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner.

(3) The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order. The guardian ad litem shall represent the child at preliminary, adjudicatory, dispositional and post-dispositional hearings, including the permanency plan staffings, court reviews, foster care review board hearings and permanency hearings. The guardian ad litem should maintain contact with the child and be available for consultation with the child between hearings and reviews. For a child who is very young or severely mentally disabled, the guardian ad litem should regularly monitor the child's situation through contacts with the child's caretakers and others working with the child and through periodic observations of the child.

(d) Responsibilities and duties of a lawyer guardian ad litem.

The responsibilities and duties of the guardian ad litem include, but are not limited to the following:

(1) Conducting an independent investigation of the facts that includes:

(i) Obtaining necessary authorization for release of information, including an appropriate discovery order;

(ii) Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case;

(iii) Reviewing and obtaining copies of Department of Children's Services' records;

(iv) Reviewing and obtaining copies of the child's psychiatric, psychological, substance abuse, medical, school and other records relevant to the case;

(v) Contacting the lawyers for other parties for background information and for permission to interview the parties;

(vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;

(vii) Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records;

(viii) Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;

(ix) Reviewing relevant photographs, video or audio tapes and other evidence; and

(x) Engaging and consulting with professionals and others with relevant special expertise.

(2) Explaining to the child, in a developmentally appropriate manner:

(i) the subject matter of litigation;

(ii) the child's rights;

(iii) the court process;

(iv) the guardian ad litem's role and responsibilities;

(v) what to expect before, during and after each hearing or review;

(vi) the substance and significance of any orders entered by the court and actions taken by a review board or at a staffing.

(3) Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.

(4) Assessing the needs of the child and the available resources within the family and community to meet the child's needs.

(5) Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.

(6) Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.

(7) Advocating the position that serves the best interest of the child by:

(i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;

(ii) Participating in depositions, discovery and pretrial conferences;

(iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;

(iv) Making opening statements and closing arguments;

(v) Calling, examining and cross-examining witnesses, offering exhibits and

introducing independent evidence in any proceeding;

(vi) Filing briefs and legal memoranda;

(vii) Preparing and submitting proposed findings of facts and conclusions of law;

(viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;

(ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;

(x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;

(xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.

(8) Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.

(9) Ensuring that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.

(10) Providing representation with respect to appellate review including:

(i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;

(ii) filing an appeal when appropriate; and

(iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party.

(e) Responsibilities and duties of a guardian ad litem when the child's best interests and the child's preferences are in conflict.

(1) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

(i) Fully investigate all of the circumstances relevant to the child's position, marshal every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;

(ii) Discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.

(2) If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian ad litem shall pursue one of the following options:

(i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest.

(ii) Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child.

(3) If, under the circumstance set forth in subsection (b), the guardian ad litem is of the opinion that he or she must advocate a position contrary to the

child's wishes and the court has refused to provide a separate lawyer for the child to help the child advocate for the child's own wishes, the guardian ad litem should:

(i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position;

(ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child's position.

(f) Guardian ad litem to function as lawyer, not as a witness or special master.

(1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, §§ EC 5-9, 5-10 and DR 5-101.

(2) A guardian ad litem is not a special master, and should not submit a "report and recommendations" to the court.

(3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented. [Adopted by order filed February 5, 2002.]

Law Reviews. Juvenile Court Hearsay Revisited, 38 No. 5 Tenn. B.J. 24 (2002).
Protecting Our Most Vulnerable Citizens:

New Guidelines Clarify, Strengthen Mission for Guardians Ad Litem, 38 No. 6 Tenn. B.J. 13 (2002).

NOTES TO DECISIONS

1. Preference Guardian Ad Litem.

In a termination of parental rights case, the court did not err by failing to appoint a preference guardian ad litem because the mother attested that she used cocaine approximately 30 days before trial; also, the cross examination of witnesses or presentation of additional evidence by a preference guardian ad litem would

not have dictated any conclusion other than that the mother contravened the requirements of her permanency plans by failing to lead a drug-free lifestyle. In re J.C.D., 254 S.W.3d 432, 2007 Tenn. App. LEXIS 741 (Tenn. Ct. App. Nov. 30, 2007), appeal denied, In re J. C. D., — S.W.3d —, 2008 Tenn. LEXIS 131 (Tenn. Feb. 25, 2008).

Rule 40A. Appointment of Guardians Ad Litem in Custody Proceedings.

Section 1. Definitions.

(a) "Custody proceeding" means a court proceeding, other than an abuse or neglect proceeding, in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic violence, and contested adoptions.

(b) "Abuse or neglect proceeding" means a court proceeding for protection of a child from abuse or neglect or a court proceeding in which termination of parental rights is at issue.

(c) "Guardian Ad Litem" means a licensed attorney appointed by the court to represent the best interests of a child or children in a custody proceeding.

Commentary. Under revised Rule 40A it is now possible for the same attorney who is appointed as a Rule 40 guardian ad litem to follow a case and be appointed to represent the child as a Rule 40A guardian ad litem in sub-

sequent proceedings (e.g., a termination of parental rights case in Juvenile Court followed by a contested adoption between competing grandparents in Chancery Court).

Section 2. Applicability. This Rule applies to all guardian ad litem appointments in custody proceedings pending on or filed after the effective date of this Rule. On or after the effective date of this Rule, licensed attorneys appointed as guardians ad litem under the prior Rule 40A may be re-appointed under the terms of this Rule.

Section 3. Guardian Ad Litem Appointments.

(a) Consistent with Tennessee Code Annotated section 36-4-132, in a custody proceeding the court may appoint a guardian ad litem when the court finds that the child's best interests are not adequately protected by the parties and that separate representation of the child's best interests is necessary. Such an appointment may be made at any stage of the proceeding.

(b) Courts should not routinely appoint guardians ad litem in custody proceedings. Rather, the court's discretion to appoint guardians ad litem shall be exercised sparingly. In most instances, the child's best interests will be adequately protected by the parties.

(c) In determining whether appointing a guardian ad litem is necessary, the court shall consider:

(1) the fundamental right of parents to the care, custody, and control of their children;

(2) the nature and adequacy of the evidence the parties likely will present;

(3) the court's need for additional information and/or assistance;

(4) the financial burden on the parties of appointing a guardian ad litem and the ability of the parties to pay reasonable fees to the guardian ad litem;

(5) the cost and availability of alternative methods of obtaining the information/evidence necessary to resolve the issues in the proceeding without appointing a guardian ad litem; and

(6) any alleged factors indicating a particularized need for the appointment of a guardian ad litem, including:

(i) the circumstances and needs of the child, including the child's age and developmental level;

(ii) any desire for representation or participation expressed by the child;

(iii) any inappropriate adult influence on or manipulation of the child;

(iv) the likelihood that the child will be called as a witness or be questioned by the court in chambers and the need to minimize harm to the child from the processes of litigation;

(v) any higher than normal level of acrimony indicating the parties' lack of objectivity concerning the needs and best interests of the child;

(vi) any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;

(vii) the likelihood of a geographic relocation of the child that could substantially reduce the child's time with a parent, a sibling, or another individual with whom the child has a close relationship;

(viii) any conduct by a party or an individual with whom a party associates which raises serious concerns for the safety of the child during periods of custody, visitation, or parenting time with that party;

(ix) any special physical, educational, or mental-health needs of the child that require investigation or advocacy;

(x) any dispute as to paternity of the child; and

(xi) any other factors necessary to address the best interests of the child.

(d) If the court concludes that appointing a guardian ad litem is necessary, the court should endeavor to appoint a person with the knowledge, skill, experience, training, education and/or any other qualifications the court finds necessary that enables the guardian ad litem to conduct a thorough and impartial investigation and effectively represent the best interests of the child.

Section 4. Appointment Order.

(a) Appointment of a guardian ad litem shall be by written order of the court.

(b) In plain language understandable to non-lawyers, the order shall set forth:

(1) the reasons for the appointment, focusing upon the factors listed in Section 3(c) of this Rule;

(2) the specific duties to be performed by the guardian ad litem in the case;

(3) the deadlines for completion of these duties to the extent appropriate;

(4) the duration of the appointment; and

(5) the terms of compensation consistent with Section 11 of this Rule.

(c) The court shall provide in the appointment order as much detail and clarity as possible concerning the guardian ad litem's duties. Providing such specificity will assist the parties in understanding the guardian ad litem's role and will enable the court to exercise effective oversight of the guardian ad litem's role.

(d) There is no right to a peremptory challenge of a guardian ad litem. Allegations that a guardian ad litem appointment is unnecessary, that a particular appointee is unqualified or otherwise unsuitable, or that an appointee is or has become biased should be raised without delay and should be addressed by trial courts through motion practice. Any appeal from a trial court's decision on such a motion shall be prosecuted pursuant to Tennessee Rules of Appellate Procedure 9 and 10.

Commentary. The omission of the original Section 4(d) (conflicts of interests) from revised Rule 40A does not mean that a guardian ad litem may ignore a conflict of interest. On the contrary, a guardian ad litem who runs afoul of the conflict-of-interest provisions of the Rules of Professional Conduct is subject to appropriate disciplinary action.

Section 5. Duration of Appointment. Appointment of a guardian ad litem continues in effect only for the duration provided in the appointment order or any subsequent order. If no order specifies the duration of the appointment, the appointment shall terminate automatically when the trial court order or judgment disposing of the custody or modification proceeding becomes final.

Section 6. Role of Guardian Ad Litem.

(a) The role of the guardian ad litem is to represent the child's best interests by gathering facts and presenting facts for the court's consideration subject to the Tennessee Rules of Evidence. (See Section 8 of this Rule.)

(b) The guardian ad litem shall not function as a special master for the court or perform any other judicial or quasi-judicial responsibilities.

Section 7. Access to Child and Information Relating to Child.

(a) Subject to subsections (b) and (c), when the court appoints a guardian ad litem in a custody proceeding, the court shall issue an order, with notice to all parties, authorizing the guardian ad litem to have access to:

(1) the child, without the presence of any other person unless otherwise ordered by the court, and

(2) confidential information regarding the child, including the child's educational, medical, and mental health records, any agency or court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding.

(b) A child's record that is privileged or confidential under law other than this Rule may be released to a guardian ad litem only in accordance with that law, including any requirements in that law for notice and opportunity to object to release of records. Information that is privileged under the attorney-client relationship may not be disclosed except as otherwise permitted by law of this state other than this Rule.

(c) An order issued pursuant to subsection (a) must require that a guardian ad litem maintain the confidentiality of information released, except as necessary for the resolution of the issues in the proceeding. The court may impose in an order of access any other condition or limitation that is required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding.

Section 8. Duties/Rights of Guardian Ad Litem.

(a) The guardian ad litem shall satisfy the duties and responsibilities of the appointment in an unbiased, objective, and fair manner.

(b) A guardian ad litem shall:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child, which can include, but is not limited, to ascertaining:

(i) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;

(ii) the child's social needs;

(iii) the child's educational needs;

(iv) the child's vulnerability and dependence upon others;

(v) the child's need for stability of placement;

(vi) the child's age and developmental level, including his or her sense of time;

(vii) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;

(viii) the love, affection and emotional ties existing between the child and the parents;

(ix) the importance of continuity in the child's life;

- (x) the home, school and community record of the child;
 - (xi) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and
 - (xii) the list of factors set forth in Tenn. Code Ann. § 36-6-106.
- (2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 7.
 - (3) within a reasonable time after the appointment, interview:
 - (i) the child in a developmentally appropriate manner, if the child is four years of age or older;
 - (ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and
 - (iii) the parties to the suit;
 - (4) if the child is twelve (12) years of age or older, seek to elicit in a developmentally appropriate manner the reasonable preference of the child;
 - (5) consider the child's expressed objectives without being bound by those objectives;
 - (6) encourage settlement of the issues related to the child and the use of alternative forms of dispute resolution; and
 - (7) perform any specific task directed by the court.
 - (c) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

- (1) fully investigate all of the circumstances relevant to the child's position, identify every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;

- (2) discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.

- (3) if, after fully investigating and advising the child, the child continues to urge the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian shall take all reasonable steps to:

- (i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position; and

- (ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child's position.

Section 9. Participation in Proceeding. A guardian ad litem appointed in a custody proceeding is entitled to all rights and privileges accorded to an attorney representing a party, including but not limited to the right to:

- (a) receive a copy of each pleading or other record filed with the court in the proceeding;

- (b) receive notice of, attend, and participate in each hearing in the proceeding, including alternative dispute resolution proceedings, and take any action that may be taken by an attorney representing a party pursuant to the Rules of Civil Procedure.

Commentary. Current Rule 40A differs from the prior rule in that the guardian ad litem now functions as a lawyer, not as a witness or special master. The guardian ad litem does not prepare a report for the parties or the court, nor does the guardian ad litem make a recommendation to the parties or the court concerning custody. Specifically:

(1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, Rule of Professional Conduct 3.7.

(2) A guardian ad litem is not a special master, and should not submit a "report and recommendations" to the court but may file a

pre-trial brief/memorandum as any attorney in any other case. The guardian ad litem may advocate the position that serves the best interest of the child by performing the functions of an attorney, including but not limited to those enumerated in Supreme Court Rule 40(d)(7).

(3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

Section 10. Expediting Custody Proceedings. To the extent possible, courts shall expedite custody proceedings in which guardians ad litem have been appointed, using available technological and electronic means to speed the process and to minimize costs.

Section 11. Guardian Ad Litem Fees and Expenses.

(a) The guardian ad litem shall be compensated for fees and expenses in an amount the court determines is reasonable. In determining whether the guardian ad litem's fees and expenses are reasonable, the court shall consider the following factors:

- (1) the time expended by the guardian;
- (2) the contentiousness of the litigation;
- (3) the complexity of the issues before the court;
- (4) the expenses reasonably incurred by the guardian;
- (5) the financial ability of each party to pay fees and costs;
- (6) the fee customarily charged in the locality for similar services; and
- (7) any other factors the court considers necessary.

(b) Concerning the allocation of the fee among the parties, the court may do one or more of the following:

- (1) order a deposit to be made into an account designated by the court for the use and benefit of the guardian ad litem;
- (2) before the final hearing, order an amount in addition to the amount ordered deposited under paragraph (1) to be paid into the account;
- (3) equitably allocate fees and expenses among the parties; and
- (4) reallocate the fees and expenses at the conclusion of the custody proceeding, in the court's discretion, if the initial allocation of guardian ad litem fees and/or expenses among the parties has become inequitable as a result of the income and financial resources available to the parties, the conduct of the parties during the custody proceeding, or any other similar reason. Any reallocation shall be included in the court's final order in the custody proceeding and shall be supported by findings of fact.

(c) The appointment order shall specify the hourly rate to be paid to the guardian ad litem. If an initial deposit is deemed appropriate by the trial court, the appointment order shall state the amount of deposit, the date of deposit, and the account or location in which the deposit shall be made. The order shall also state whether periodic payments may be drawn from the initial deposit.

(d) If an initial deposit is required and the trial court deems that periodic payments may be drawn from the initial deposit, the trial court shall:

- (1) provide the manner in which withdrawals may be made;
- (2) require notice to the parties of the withdrawal, including a statement of services rendered, supported by an affidavit; and
- (3) provide a reasonable opportunity to object to the fees charged before the withdrawal is made.

(e) To receive payment under this section beyond the amount in the initial deposit, if any, the guardian ad litem must complete and file with the court a written claim for payment, whether interim or final, justifying the fees and expenses charged and supported by an affidavit. Any objection to the guardian ad litem's fee claim shall be filed within fifteen days after the claim is filed.

(f) Failure to object to a statement regarding periodic payments does not constitute a waiver of any objection to the reasonableness of the guardian ad litem's total fees. The guardian ad litem shall file a final written claim for payment within thirty days of the entry of the final order. Any objection must be filed within fifteen days after the guardian ad litem's final written claim for payment is filed.

(g) If no objection is timely filed, the court shall file a written order approving the claim, or portion thereof, determined to be reasonable and related to the duties of the guardian ad litem.

(h) If an objection is timely filed, the court shall conduct a hearing and thereafter file a written order denying the claim, or approving the claim, or portion thereof, determined to be reasonable and related to the duties of the guardian ad litem.

(i) The guardian ad litem must seek court approval before incurring extraordinary expenses, such as expert witness fees. Any order authorizing the guardian ad litem to hire expert witnesses must specify the hourly rate to be paid the expert witness, the maximum fee that may be incurred without further authorization from the court, how the fee will be allocated between the parties, and when payment is due.

Section 12. Appeals by Guardian Ad Litem. The guardian ad litem shall not initiate an appeal. Notwithstanding the foregoing sentence, the guardian ad litem may appeal the trial court's ruling on any matter adjudicated under Section 4(d) and also may appeal the trial court's ruling following a hearing specified in Section 11(h). Upon appeal of the matter by one of the parties, however, the guardian ad litem shall have the right to receive notice of the appeal and may participate in the appeal as any other party, including but not limited to, filing briefs, motions and making oral arguments.

Section 13. Effective Date. The original version of this rule was adopted as a provisional rule and governed all custody proceedings, as defined in Section 1(a) of the rule, from May 1, 2009, through August 31, 2011. This revised rule is adopted as a permanent rule. The revised rule shall take effect on September 1, 2011, and shall apply to all proceedings pending on or filed after the effective date. [As adopted by order filed July 12, 2011, effective September 1, 2011; amended by order filed and effective August 25, 2016.]

Compiler's Notes. In its order filed August 25, 2016, the Supreme Court provided that: "On May 16, 2016, the Court filed an order soliciting public comments on a proposed amendment to Rule 40A of the Rules of the Supreme Court, which governs the appointment of guardians ad litem in child custody proceedings. As stated in that earlier order, the Court was considering the adoption of the following amendment to Rule 40A(I)(a):

"(a) 'Custody proceeding' means a court proceeding, other than an abuse or neglect proceeding, in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic vio-

lence, and contested adoptions, and contested private guardianship cases.

"The public-comment period expired on July 15, 2016. The Court received no written comments during the comment period.

"After due consideration, the Court concludes that the inclusion of 'contested private guardianship cases' in the current definition of 'custody proceeding,' as set out in Rule 40A(I)(a), results in an apparent conflict between Rule 40A(6)(b)* and Tennessee Code Annotated section 34-1-107(d)(1) (2015).^{*} Accordingly, the Court hereby amends Rule 40A(1)(a) by adopting the proposed amendment set out above; this amendment shall take effect upon the filing of this order (August 25, 2016)."

NOTES TO DECISIONS

ANALYSIS

1. Effective Representation.
2. Immunity.
3. Representation After Child Reaches 18.
4. Term of Appointment.

1. Effective Representation.

Although a Tenn. Sup. Ct. R. 40A guardian ad litem does not prepare a report for the parties or the court, nor does the guardian ad litem make a recommendation concerning custody, this new role does not create an attorney-client relationship with the children in a custody proceeding. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

Considering the entirety of Tenn. Sup. Ct. R. 40A, it is apparent that the Supreme Court of Tennessee did not intend to create an attorney-client relationship between a guardian ad litem and the child or children whose best interests he or she represents. Nevertheless, because all Rule 40A guardians ad litem are licensed attorneys, they are subject to the Rules of Professional Conduct in the performance of their duties, subject to the parameters of and pursuant to exceptions arising from Rule 40A and an order of appointment. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

Child's claim that the guardian ad litem had improperly disclosed confidential information

was properly dismissed where the appointment order expressly authorized disclosure of information to the court, and as a result, the guardian had not violated Tenn. Sup. Ct. R. 8, DR 1.6. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

It is apparent from considering Tenn. Sup. Ct. R. 40A in its entirety that the Supreme Court of Tennessee did not intend for a Rule 40A guardian ad litem to have a typical attorney-client relationship with the child or children whose best interests he or she is appointed to represent. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

2. Immunity.

Guardian ad litem did not have quasi-judicial immunity from a child's claims as T.C.A. § 36-4-132(c) did not provide absolute immunity, and under Tenn. Sup. Ct. R. 40A, § 6(b), the guardian was not performing quasi-judicial responsibilities. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

3. Representation After Child Reaches 18.

Although Tenn. Sup. Ct. R. 40A does not expressly state what happens if a child in the custody proceeding reaches the age of majority before the case is concluded, it is implicit from review of the rule that the guardian ad litem's

*Rule 40A(6)(b) provides that "[t]he guardian ad litem shall not function as a special master for the court or perform any other judicial or quasi-judicial responsibilities."

*Tennessee Code Annotated section 34-1-107 (2015) governs the appointment of guardians ad litem in guardianship and conservatorship proceedings. Tennessee Code Annotated section 34-1-107(d)(1) provides: "The guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party."

role continues until an order terminating the appointment of the guardian ad litem is entered or when the trial court order or judgment disposing of the custody or modification proceeding becomes final. Tenn. Sup. Ct. R. 40A, § 5. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

4. Term of Appointment.

Appointment of the guardian ad litem does not terminate as to one or all of the children until the trial court enters an order to that affect, or the court enters an order or judgment that disposes of the custody or modification

proceeding. Tenn. Sup. Ct. R. 40A, § 5. *Runyon v. Zacharias*, 556 S.W.3d 732, 2018 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 307 (Tenn. May 17, 2018).

Trial court was well within its discretion to designate the guardian ad litem as “unrestricted” as the guardian ad litem was not testifying in support of her motion to modify visitation. In re *Damon B.*, — S.W.3d —, 2018 Tenn. App. LEXIS 352 (Tenn. Ct. App. June 25, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 607 (Tenn. Sept. 18, 2018), cert. denied, *Michael B. v. Tenn. Dep’t of Children’s Servs.*, 205 L. Ed. 2d 32, 140 S. Ct. 107, — U.S. —, 2019 U.S. LEXIS 5246 (U.S. Oct. 7, 2019).

Rule 41. Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

PREAMBLE. Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency (“LEP”). It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY AND ENFORCEMENT. This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, deliver, or attempt to become credentialed to deliver spoken foreign language interpreting services to the judicial system. The Canons and any subparts are mandatory upon persons who are bound by this code. The commentary is not mandatory and exists to provide guidance in interpreting the code. Interpreters for the deaf and hard of hearing are not covered by this code. See Tenn. Code Ann. § 24-1-211 regarding guidelines for such interpreters.

Violations of this code may result in the interpreter being removed from a case, being denied future appointments by the courts, losing credentials if the interpreter has been credentialed pursuant to the rules of the Supreme Court, or any other sanctions deemed appropriate by the Administrative Director of the Courts.

The Administrative Director of the Courts is authorized to adopt policies and procedures necessary to enforce the code.

TERMINOLOGY.

- (1) Consecutive Interpretation - providing the target-language message after the speaker has finished speaking.
- (2) Sight Interpretation - oral translation of a written text.

- (3) Simultaneous Interpretation - providing the target-language message at approximately the same time the source-language message is being produced.
- (4) Source language - the input language requiring interpretation.
- (5) Target language - the output language into which the utterance is being interpreted.

Law Reviews. Confrontation and the Law of Evidence: Can the Language Conduit Theory Survive in the Wake of Crawford? 67 Vand. L. Rev. 1497 (2014).

CANON 1. ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or translation without altering, omitting, or adding anything to what is stated or written, and without explanation.

- A. The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by the LEP person, and 2) to place the LEP person on an equal footing with those who understand and speak English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.
- B. The obligation to preserve accuracy includes the interpreter’s duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters shall demonstrate their professionalism by objectively analyzing any challenge to their performance.

Commentary. Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, “word for word,” or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court’s permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker’s emotions or dramatic gestures.

CANON 2. REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent and document their credentials, training, and pertinent experience, and make such documentation available to each and every court to be maintained on file by such court, if desired.

Commentary. Acceptance of a case by an interpreter is a representation to the court of linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, credentials and experi-

ence prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

The Administrative Office of the Courts distributes photo identification cards to all state certified and registered interpreters. A court can determine an interpreter’s credentialing status by viewing this card, which differentiates between registered and certified interpret-

ers, and by consulting the credentialed interpreter roster, which can be found on the AOC's website (www.tsc.state.tn.us).

CANON 3. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

A. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters shall disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. Such disclosure(s) shall include, but not be limited to, the fact that the interpreter has previously been retained by one of the parties for private employment. Such disclosure(s) shall not include privileged or confidential information.

B. Whenever an interpreter has an actual or apparent conflict of interest, the interpreter shall declare in open court before appointment such conflict and the court shall determine whether the interpreter may serve in the case. Situations, including but not limited to the following, shall be presumed to create an actual or apparent conflict of interest:

(1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

(2) The interpreter has served in an investigative capacity for any party involved in the case;

(3) The interpreter has previously been retained by a law enforcement agency or any party to assist in the preparation of the case at issue;

(4) The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that would be affected by the outcome of the case;

(5) The interpreter has been involved in the choice of counsel or law firm for that case; or

(6) Any other situation in which the interpreter thinks his or her impartiality may be questioned or compromised.

C. Interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

Commentary. The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties. Although an interpreter must disclose the fact that the interpreter interpreted for a party during out-of-court meetings, interviews, or other proceedings in the case at issue, ethical considerations do not preclude the interpreter from serving as the interpreter for multiple

parties or for both the court and one or more parties in that case.

An individual who is, or may become, a witness is not permitted to serve as an interpreter in that same matter.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement

officers, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional

detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary. Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When interpreting testimony or making comments to be included in the record, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing un-

due or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court. Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5. CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary. The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understands and upholds the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. It is equally important for the interpreter to be aware that when the attorney is not present, there is no attorney-client privilege and the interpreter may be held to divulge any information gained. The interpreter, therefore, must avoid any such situation. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests the threat of imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judicial system and seek advice in regard to the potential conflict in professional responsibility.

CANON 6. RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.

CANON 7. SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary. Since interpreters are responsible only for enabling others to communi-

cate, they should limit themselves to the activity of interpreting or translating only.

Interpreters should refrain from initiating communications while interpreting at all times except as set out below.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should refer to themselves in the third person as "the interpreter," making it clear and on the record that they are speaking for themselves.

At no time can an interpreter give advice, but an interpreter may interpret legal advice from an attorney to any party while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors. The interpreter may translate language on a form in the presence of an attorney or authorized legal personnel for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation officers, except as required by and in the presence of such officials.

CANON 8. ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall familiarize themselves as thoroughly as possible with the nature and length of a proceeding beforehand, to assess their ability to deliver adequate services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority even when the proceeding is in progress.

Commentary. If the communication mode or language of the LEP person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the LEP speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret).

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary, such as trials, complex and technical proceedings, proceedings over two hours in length and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). See the commentary to Section 3 of Tennessee Supreme Court Rule 42 for additional information.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables

interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the court if they feel unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant. Court personnel and parties are encouraged to provide interpreters with copies of all documents referred to in a proceeding, such as witness lists, indictment, exhibit lists, criminal complaint, investigative reports, tape transcripts, telephone logs and bank records.

Interpreters should notify the court of any personal bias they may have involving any

aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9. MISCONDUCT

An interpreter shall not commit a criminal act that reflects adversely on the interpreter's honesty, trustworthiness, or fitness as an interpreter in other respects. Likewise, an interpreter shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Commentary. This language is intended to put interpreters on notice that inappropriate conduct before, during, and after successful completion of the credentialing process may have professional ramifications. The conduct at issue includes, but is not limited to, inappropriate behavior in which an interpreter engages during one or more of the required credentialing examinations.

CANON 10. DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary. Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, specific instructions from the bench, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should request the judge or appropriate official with jurisdiction over interpreter matters to resolve the situation.

CANON 11. PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary. Interpreters must continually strive to increase their knowledge of the languages in which they professionally interpret, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings. Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties. An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

CANON 12. PRO BONO PUBLICO SERVICE

Interpreters should aspire to render a reasonable amount of pro bono publico interpretive services per year. In fulfilling this responsibility, interpreters should:

- (a) provide a substantial portion of such services without fee or expectation of fee to persons of limited means; or
- (b) provide interpretive services at a substantially reduced fee to persons of limited means. [As added by order filed December 16, 2011, effective July 1, 2012.]

Commentary. Personal involvement in the problems of the disadvantaged can be a rewarding experience in the life of an interpreter. This Canon urges all interpreters to provide a reasonable number of hours of pro bono service annually.

Under paragraph (a), service must be provided without fee or expectation of fee. The intent of the interpreter to render free services is essential for the work performed to fall within the meaning of paragraph (a); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected.

Paragraph (b) permits the pro bono interpreter to accept a substantially reduced fee for services to persons of limited means; again, however, the intent of the interpreter to render reduced-fee services is essential for the work performed to fall within the meaning of paragraph (b); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected.

Because this Canon states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

Rule 42. Standards for Court Interpreters.

Law Reviews. Confrontation and the Law of Evidence: Can the Language Conduit Theory

Survive in the Wake of Crawford? 67 Vand. L. Rev. 1497 (2014).

Sec. 1. Scope. This rule, except where noted, shall apply to all courts in this state, including without limitation, municipal court, general sessions court, juvenile court, probate court, circuit court, chancery court, criminal court, and the appellate courts. [As amended by order filed June 27, 2012, effective July 1, 2012.]

Commentary. This rule recognizes that for most people living in the United States, English is their native language, or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. For them language can be a barrier to understanding and exercising

their legal rights, and to securing meaningful access to the judicial system.

This rule is promulgated to assist the courts in this state in providing equal access to the courts to participants who have a limited ability to speak or understand the English language.

Sec. 2. Definitions.

(1) State Certified Court Interpreter — an interpreter who possesses the qualifications outlined in Section 5(b) of this rule.

(2) State Registered Court Interpreter — an interpreter who possesses the qualifications outlined in Section 5(a) of this rule.

(3) Interpretation — the unrehearsed transmission of a spoken message from one language to another.

(4) Limited English Proficient (“LEP”) Person — a participant in a legal proceeding who has limited ability to speak or understand the English language.

(5) Non-Credentialed Interpreter — a court interpreter who is not certified or registered as provided in this rule.

(6) Participant — a party, witness, or other person in a legal proceeding.

(7) Sight Translation — oral translation of a written text.

(8) Written Translation — the rendering of a written document from one language into a written document in another language.

(9) Audio or Video Transcription and Translation — written transcription of the entire verbal content and translation of the non-English verbal content of an audio or video recording.

(10) Court Proceedings — any hearing, trial, or other appearance before any Tennessee general sessions court, or municipal court exercising general

sessions jurisdiction, or any juvenile, probate, circuit, chancery, criminal, or appellate court, in an action, appeal, or other proceeding, including any matter conducted by a judicial magistrate.

(11) Indigent Party — a party found by a court to be indigent pursuant to the provisions of Tennessee Code Annotated section 40-14-202 or other applicable statute, which finding shall be evidenced by a court order. [As amended by order filed June 27, 2012, effective July 1, 2012.]

Sec. 3. Determining Need for Interpretation.

(a) Appointing an interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. If the court determines that a participant has such limited ability, the court should appoint an interpreter pursuant to this rule.

(b) Recognition of the need for an interpreter may arise from a request by a party or counsel, the court's own voir dire of a party or witness, or disclosures made to the court by parties, counsel, court employees or other persons familiar with the ability of the person to understand and communicate in English.

(c) The court shall appoint an interpreter according to the preference listed below:

1. State certified court interpreter;
2. State registered court interpreter;
3. Non-credentialed court interpreter.

(d) The court may appoint an interpreter of lesser preference (i.e., registered instead of certified or non-credentialed instead of registered) only upon a finding that diligent, good faith efforts to obtain the certified or registered interpreter, as the case may be, have been made and none has been found to be reasonably available. A non-credentialed interpreter may be appointed only after the court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

(e) Before appointing a non-credentialed interpreter, the court shall make the following findings:

(i) that the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting; and

(ii) that the proposed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

(f) A summary of the efforts made to obtain a certified or registered interpreter and to determine the capabilities of the proposed non-credentialed interpreter should be made in open court.

(g) The court shall use the services of multiple interpreters where necessary to aid interpretation of court proceedings. [As amended by order filed December 16, 2011, effective July 1, 2012.]

Commentary. The Administrative Office of the Courts distributes photo identification cards to all state certified and registered interpreters. A court can determine an interpreter's credentialing status by viewing this card, which differentiates between registered and certified interpreters, and by consulting the credentialed interpreter roster, which can be found on the AOC's website (www.tsc.state.tn.us).

Section 3(g). The court may wish to consider using multiple interpreters in legal proceedings where one or more of the following situations exist

(1) Legal proceedings lasting more than 2 hours—Generally, in legal proceedings lasting more than two hours a team of two interpreters should be designated to ensure the accuracy and completeness of the record by allowing interpreters to alternate work and rest in short shifts, thus avoiding fatigue. Although it may not be necessary to use multiple interpreters for short hearings, studies have shown that interpreters' accuracy rates greatly decrease

after 20-30 minutes of continuous interpretation. Therefore, courts should be aware that interpreters may need breaks during relatively short hearings.

(2) Multiple defendants—One or more interpreters may be appointed (apart from the interpreter(s) who are interpreting the legal proceedings) in order to provide interpreting services for attorney-client communications during the proceeding. However, courts should be aware that ethical considerations do not preclude interpreters from facilitating in-court and out-of-court communication for both the court and one or more parties in the same proceeding. Moreover, the Administrative Office of the Courts has provided many courts with simultaneous interpreting equipment, which will allow one interpreter to interpret for multiple defendants during a single proceeding.

See the commentary to Canon 8 of Tennessee Supreme Court Rule 41 for additional information regarding circumstances in which it may be advisable to use multiple interpreters.

Sec. 4. Procedures.

(a) **Scheduling Interpreter Services.** — Interpreter services will be scheduled as determined by local rules or at the direction of the court.

(b) **Waiver of Interpreter.** — The LEP participant may at any point in the proceeding waive the services of an interpreter. The waiver of the interpreter's services must be knowing and voluntary, and with the approval of the court. Granting such waiver is a matter of judicial discretion, subject to the procedural requirements of section 4(b)(1).

(1) Waiver Procedure.

(i) Before approving a waiver, the judge, in open court, must first explain to the LEP person through an interpreter the nature and effect of the waiver; and

(ii) the judge must determine in open court that the waiver has been made knowingly, intelligently, and voluntarily.

(iii) If the LEP person is the defendant in a criminal matter, the court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney.

(2) At any point in any proceeding, for good cause shown, the LEP person may retract his or her waiver and request an interpreter.

(c) **Interpreter Oath.** — All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The court shall use the following oath:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts; that you will follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?" [As amended by order filed June 27, 2012, effective July 1, 2012.]

Commentary. Section 4(a). Comment. The person(s) responsible for arranging for the services of the interpreter and making sure the interpreter is available for appointment to provide services for the court hearing(s) shall be left to the local courts to decide. It is recommended that local rules reflect the arrangement process to assist those appearing before the courts.

Section 4(c). Comment 1. It is common practice for interpreter oaths to be sworn to and maintained on file for all interpreters who are regularly employed by a court. This simplifies the court's inquiries in open court during procedural hearings. It is recommended, however,

that an oath be read and sworn to in open court in all proceedings conducted before a jury.

Section 4(c). Comment 2. The Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts address the various ethical responsibilities of interpreters for accuracy and completeness, impartiality, confidentiality, and other matters relating to the professional conduct of interpreters. The court should be alerted to potential conflicts of interest or other violations of the Rules of Ethics. The sanction of removal from the case is justified for any violations of the Rules of Ethics. See Tennessee Supreme Court Rule 41 for additional information.

Sec. 5. State Certified and Registered Court Interpreters.

(a) To receive designation as a state registered court interpreter, the candidate shall:

- (1) Submit to a criminal background check. Convictions for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less as provided in Tennessee Rule of Evidence 609;
- (2) Attend an approved ethics and skill building workshop;
- (3) Pass an approved criterion-referenced written examination;
- (4) Provide verification of United States citizenship or the legal right to work and remain in the United States;
- (5) Complete any required forms and pay any required fees; and
- (6) Complete any additional requirements established by the Administrative Director of the Courts pursuant to subsection (d).

If an oral performance examination is available, a registered court interpreter must sit for the examination at least once every twelve months from the date he/she is designated as a registered court interpreter until he/she receives a passing grade to become a certified court interpreter. Failure to sit for the oral examination as required by this section shall result in the loss of designation as a registered court interpreter and the interpreter shall be required to begin the credentialing process anew.

(b)(1) To receive designation as a state certified court interpreter, the candidate shall:

- (i) Successfully meet the requirements to be designated as a state registered court interpreter;
- (ii) Pass an approved criterion-referenced oral performance examination; and
- (iii) Complete any additional requirements established by the Administrative Director of the Courts pursuant to subsection (d).

(2) Interpreters with certification as a federal court interpreter shall be granted reciprocity as a state certified court interpreter after successfully meeting the requirements of (a)(1), (a)(2), (a)(4), (a)(5), and (a)(6) above. Interpreters with any other type of certification will be reviewed on a case-by-case basis to determine what steps the interpreters must take to be granted state court interpreter certification.

(c)(1) Once credentialed, certified and registered court interpreters shall be required to renew their credentials every three years. The three-year effective period begins on July 1 following the date of credentialing. Renewals are from July 1 of one year to June 30 of the third year for three-year periods.

(2) Renewing credentials requires the following:

(i) Providing documentation of 18 hours of approved continuing education (CE) credits received during the three-year period. A CE credit is equal to one contact hour in the classroom. A minimum of 12 of the 18 hours must consist of foreign language or interpreting skills training. The Administrative Director of the Courts is authorized to adopt policies and procedures necessary to implement this provision of the rule; and

(ii) Completing any required forms and paying any required fees.

(d) The Administrative Director of the Courts shall determine appropriate examination registration fees as well as examination eligibility requirements, requirements for successful completion of examinations, and penalties for unsuccessful completion of examinations. The Administrative Director of the Courts also has the authority to impose additional requirements for an interpreter to earn, retain, or reinstate status as a registered or certified interpreter. The director is authorized to adopt policies and procedures necessary to implement this provision of the rule.

Commentary.

Comment 1. Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess, including language instructors. The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. Due to the highly specialized knowledge and skills required in this profession, the Court has promulgated this rule to adopt uniform qualifications for interpreters serving in Tennessee's courts.

Comment 2. A "criterion-referenced" performance examination is one in which the required score is based on an absolute standard rather than one on the relative performance of examinees as measured against one another.

Comment 3. Interpreters are responsible for familiarizing themselves with the credentialing and renewal requirements. For additional information, interpreters should consult the interpreter page of the Administrative Office of the Courts' website, which can be accessed at www.tsc.state.tn.us, or contact the Administrative Office of the Courts.

Sec. 6. Removal of an Interpreter in Individual Cases. Any of the following actions shall be good cause for a judge to remove an interpreter from a case:

- (1) Incompetence;
- (2) Being unable to interpret adequately, including where the interpreter self-reports such inability;
- (3) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (4) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (5) Misrepresentation of credentials;
- (6) Failure to reveal potential conflicts of interest; or
- (7) Failing to follow other standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

Commentary. It is important to recognize that interpreters are sometimes called to court to interpret for someone who speaks a different language or dialect from that spoken by the interpreter. This section authorizes the court to

remove interpreters who are not competent to interpret for this or any other reason, or who violate the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

Sec. 7. Cost of Interpreter/Translator Services. The reasonable costs associated with an interpreter’s and/or translator’s services will be compensated when a court finds, upon motion of counsel or on the court’s own initiative, that a participant has limited English proficiency (“LEP”). The term “interpret” refers to the process of transmitting the spoken word from one language to another. The term “translate” refers to the process of transmitting the written word from one language to another. When it is necessary for a court to utilize the services of an interpreter to determine if an individual is LEP, the AOC will compensate the interpreter for this service. The reasonable costs will be compensated pursuant to this section 7 when a general sessions court, or a municipal court exercising general sessions jurisdiction, or a juvenile, probate, circuit, chancery, criminal, or appellate court, finds, on motion of a party or on the court’s own initiative, that a party has limited English proficiency. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be reasonable.

(a) Rates of Compensation.

Compensation rates for services provided by spoken Spanish foreign language interpreters shall not exceed the following: Certified Interpreter — \$50 per hour; Registered Interpreter — \$40 per hour; Non-Credentialed Interpreter — \$25 per hour. Compensation rates for services provided by spoken foreign language interpreters for languages other than Spanish shall not exceed \$75 per hour. Compensation for interpreters or translators shall not exceed the following: Certified Interpreter — \$500 per day; Registered Interpreter — \$400 per day; Non-Credentialed Interpreter — \$250 per day. If the court finds that these maximum rates are inadequate to secure the services of a qualified interpreter in a language other than Spanish, the court shall make written findings regarding such inadequacy and determine a reasonable maximum rate for a qualified interpreter. Interpreters shall be compensated for in-court interpretation time and travel time at the compensation rate approved by the court. If the in-court interpretation time and travel time total less than two (2) hours, a minimum of two (2) hours will be compensated for the day.

(b) Translation of Documents.

The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of an indigent party with LEP. Document translation shall be compensated at a rate of twenty cents (\$0.20) per word. If the court finds that this rate is inadequate to secure the services of a qualified translator, the court shall make written findings regarding such inadequacy and determine a reasonable per-word translation rate.

(c) Translation of Audio or Video Media.

Services associated with the review or transcription/translation of audio or

video tapes that include languages other than English shall be compensated at the same rate provided for spoken foreign language interpreters in section 7(a) of this rule.

(d) Expenses.

The following expenses shall be paid as indicated:

(1) Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities; however mileage will not be paid for travel from residence/office to courthouse within the same county;

(2) Lodging where an overnight stay is required, at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates;

(3) Meals in accordance with the Judicial Department travel regulations, if supported by a receipt, where an overnight stay is required;

(4) Parking at actual costs up to ten dollars per day, if supported by a receipt.

(5) Time spent traveling shall be compensated at the same rates provided for spoken language interpreters in Section 7(a), except that interpreters compensated at a rate of one hundred dollars (\$100) per hour or more shall be compensated for travel time at no greater than fifty percent (50%) of the interpreter's approved hourly rate.

(6) Other expenses not listed in section (d) above, including travel outside the state, will be reimbursed only if prior authorization is obtained from the court.

(e) Prior Approval Required for Services Exceeding \$5,000.

If the court approves an amount in excess of five thousand dollars (\$5,000) for interpreter/translator services, the order(s) and any attachments must be submitted to the director for prior approval. If the director denies prior approval of the request, the claim shall be transmitted to the chief justice for disposition. The determination of the chief justice shall be final.

(f) Claims Procedures.

Claims for compensation of interpreters and translators shall be submitted utilizing the system established by the AOC for electronic submission. The interpreter/translator's submission to the AOC must also include a copy of the court's order appointing the interpreter/translator.

(1) Claims that total \$200 or more for compensation and expenses shall be reviewed and approved by the judge who presided over the final disposition of the case prior to payment of the claim by the AOC.

(2) Claims that total less than two hundred dollars (\$200) shall be exempt from the judicial review and approval requirement. Such claims, however, shall be subject to the AOC's examination and audit pursuant to section 7(f)(4).

(3) Time for Submitting Claims.

Claims for compensation under this rule shall [be] submitted within 180 days of the day the services were rendered. Claims submitted more than 180 days after the services were rendered shall be deemed waived and shall not be paid.

(4) Examination and Audit by AOC.

(i) The AOC shall examine and audit all claims for compensation and reimbursement to insure compliance with this rule and any other applicable

rule or statute(s). The AOC may decline to make any payment should there be a failure to comply with the requirements of this Rule or any other Rule or statutory requirements.

(ii) After such examination and audit, and giving due consideration to state revenues, the director shall make a determination as to the compensation and/or reimbursement to be paid and cause payment to be issued in satisfaction thereof.

(iii) Payment may be made directly to the person, agency, or entity providing the services.

(iv) The determination by the director shall be final, except where review by the chief justice also is required. In those instances, the determination of the chief justice shall be final. The chief justice may designate another justice to perform this function if the chief justice determines that a designation is appropriate or necessary.

(v) If the director denies a fee claim in whole or substantial part, such denial shall be forwarded to the chief justice for review. The determination of the chief justice shall be final. Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.

(vi) The payment of a claim by the AOC shall not prejudice the AOC's right to object to or question any claim or matter in relation thereto. Claims shall be subject to reduction for amounts included in any claim or payment previously made which are determined by the AOC not to constitute proper remuneration for compensable services. The AOC reserves the right to deduct from claims which are or shall become due and payable any amounts which are or shall become due and payable to the AOC.

(g) Contract Services and Pilot Projects.

To facilitate the prompt and efficient disposition of proceedings which involve individuals with LEP, the AOC director may contract with interpreters that are credentialed pursuant to this Rule. Courts shall use the contracted interpreters unless they are unavailable. Counties may wish to utilize credentialed interpreters on a full-time or part-time basis with reimbursement for those services from the AOC. The rate of compensation shall not exceed, under any circumstances, the rates provided for in this rule. Counties wishing to be reimbursed for these expenses shall contact the AOC, which will determine in what amounts and by what method said reimbursement shall be made. In addition, the AOC is authorized to establish pilot projects that may include, but are not limited to, video or audio remote interpretation and regional interpretation centers.

(h) Eligible Cases and Covered Proceedings.

The following provisions govern the payment of interpreter/translator costs pursuant to this rule.

(1) In cases in which an indigent party has a statutory or constitutional right to appointed counsel as outlined in Supreme Court Rule 13, Section 1(d)(1) and (2), interpreter costs will be paid for the following proceedings:

(i) All court hearings;

(ii) Pre-trial conferences between defendants and district attorneys in order to relay a plea offer immediately prior to a court appearance or to discuss a

continuance;

(iii) Communication between client and state funded counsel appointed pursuant to Supreme Court Rule 13; and communication between client, state funded counsel and others for the purpose of gathering background information, investigation, trial preparations, and witness interviews.

(2) In cases where a party has a statutory or constitutional right to appointed counsel, as defined in section 7(h)(1), and is not found to be indigent, interpreter costs will only be paid for “court proceedings,” as defined in section 2.

(3) If a party does not have a statutory or constitutional right to appointed counsel, interpreter costs will only be paid for “court proceedings,” as defined in section 2, and at no time will the AOC pay for the costs of interpreters in the following situations:

(i) Communication with attorneys, prosecutors, or other parties related to a case involving LEP individuals for the purpose of gathering background information, investigation, trial preparation, witness interviews, or client representation at a future proceeding unless pursuant to section 7(h)(1) above;

(ii) Communications relating to probation treatment services;

(iii) Any other communication which is not part of a court proceeding or immediately preceding or following a court proceeding.

(4) Pursuant to Article 1, Section 35 of the Tennessee Constitution, interpreter costs shall be paid pursuant to this rule for services to victim(s) of crime during court proceedings in which the victim(s), or in the case of a homicide, the next-of-kin, are present. [As amended by order filed June 27, 2012, effective July 1, 2012; by order filed June 29, 2012, effective July 1, 2012; by order filed February 6, 2013, effective July 1, 2013; and amended by order filed and effective December 4, 2015.]

Commentary. Interested persons should contact the Tennessee Administrative Office of the Courts to determine the circumstances in which interpreter services may be approved and paid for by the Administrative Office of the Courts.

Compiler's Notes. In its order dated February 6, 2013, the Supreme Court provided that: “On March 8, 2010, the Court filed an order adopting Rule 13A on a provisional basis from May 1, 2010, through August 1, 2011. Rule 13A authorized the Administrative Office of the Courts to establish a system for the electronic submission of certain fee claims associated with the representation of indigent litigants and also authorized the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of the system.

“On May 10, 2012, the Court filed an order noting that the Administrative Office of the Courts had implemented the electronic-submission system authorized by the rule, and that the system was being used on a routine basis. The Court also announced its intention to undertake an internal review of the electronic-submission system, with a view toward adopt-

ing a permanent version of Rule 13A, and extending the effective date of provisional Rule 13A until further order of the Court.

“After completing its internal review of the electronic-submission system, the Administrative Office of the Courts proposed that the electronic-submission system be made mandatory for attorneys and interpreters, effective July 1, 2013, and that experts, investigators, and other support service providers continue to submit claims in writing after that date. To accomplish this, the AOC proposed amendments to Tenn. Sup. Ct. R. 13, 15, and 42, and the deletion of Tenn. Sup. Ct. R. 13A (as obsolete).

“On October 23, 2012, the Court filed an order publishing the AOC's proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The deadline for submitting written comments was December 14, 2012.

“After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 13, Tenn. Sup. Ct. R. 15, and Tenn. Sup. Ct. R. 42 as set out in the attached appendices to this order [M2010-00520-SC-RL2-RL]. The effective date of these amendments is July 1, 2013.

“With the adoption of the foregoing amendments, Tenn. Sup. Ct. R. 13A is rendered obsolete. Consequently Tenn. Sup. Ct. R. 13A is hereby repealed, effective July 1, 2013.”

Attorney General Opinions. Compensation for interpreters for indigent criminal defendants. OAG 10-64, 2010 Tenn. AG LEXIS 69 (5/6/10).

Rule 43. Interest on Lawyers’ Trust Accounts. — Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers’ Trust Accounts) program.

The following rule shall govern the operation of IOLTA accounts and the IOLTA program:

Section 1. The determination of whether or not a financial institution is an eligible institution which meets the requirements of this Rule shall be made by the Tennessee Bar Foundation, the organizational administrator of the IOLTA program. The Foundation shall maintain a list of eligible financial institutions and shall make that list available to Tennessee lawyers. The selection of an institution from the list of those eligible rests with the lawyer or law firm.

Section 2. Eligible institutions are those financial institutions which voluntarily offer IOLTA accounts and comply with the requirements of this Rule, including maintaining IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers in a local market area when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. To determine the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered when setting interest rates or dividends for customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. The determination of the highest interest rate or dividend generally available shall not include consideration of promotional rates that are offered by the financial institution for a limited time. Nothing in this Rule shall prohibit an eligible institution from paying an interest rate or dividend higher than required herein.

Section 3. If a financial institution offers one or more of the following product types to its non-IOLTA customers and an IOLTA account qualifies for one or more of the products pursuant to Section 2 of this Rule, then, in order to be an eligible financial institution, the financial institution must pay an interest rate on the IOLTA account equal to the highest yield available at that financial institution among those product types. The financial institution may, at its discretion, either use the identified product or products as the IOLTA account or pay the equivalent yield on the IOLTA account in lieu of using the highest yield bank product(s) identified:

(a) A business checking account with an automated investment feature, such as an overnight investment in repurchase agreements or money market funds fully collateralized by or invested solely in United States government securities which are direct debt obligations of the government of the United States or of agencies or instruments thereof guaranteed by the full faith and credit of the government of the United States as to the payment of principal

and interest at maturity; or

(b) A checking account paying preferred interest rates, such as market based or indexed rates; or

(c) A public funds interest-bearing checking account, such as accounts used for governmental agencies and other non-profit organizations; or

(d) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(e) A business demand deposit checking interest-bearing transaction account (when permitted by federal law); or

(f) Any other suitable interest-bearing deposit account with or tied to unlimited check writing ability offered by the institution to its non-IOLTA customers.

Section 4. As an alternative to compliance under Section 3, a financial institution may also comply with this rule if it agrees to pay a rate voluntarily negotiated with the Foundation to be in effect for and remain unchanged during a period of up to twelve months as provided pursuant to a voluntary agreement between the financial institution and the Foundation.

Section 5. A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities, and may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations.

Section 6. An open-end money-market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities and shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

Section 7. An eligible financial institution participating in the IOLTA program must also:

(a) Remit interest or dividends net of any allowable service charges or fees, preferably monthly, but at least quarterly, to the Tennessee Bar Foundation;

(b) Transmit to the Tennessee Bar Foundation, in a format specified by the Tennessee Bar Foundation, a report which contains:

(i) the name of the lawyer or law firm on whose account the remittance is sent;

(ii) the account number;

(iii) the balance on which the interest rate is applied;

(iv) the rate of interest or dividends applied;

(v) the gross interest or dividends earned;

(vi) the type and amount of any allowable service charges or fees deducted; and

(vii) the net amount remitted.

A financial institution which maintains more than thirty IOLTA accounts may, at the request of the Tennessee Bar Foundation, be required to transmit the report in an electronic format.

(c) Transmit information to the lawyer or law firm maintaining that account in accordance with the institution's normal procedures for reporting to depositors.

Section 8. No financial institution service charges or fees may be deducted from the principal of any IOLTA account.

Section 9. Deductions by the financial institution from interest earned may only be for allowable reasonable service charges or fees calculated in accordance with the institution's standard practice for non-IOLTA customers. For purposes of this Rule, "allowable reasonable service charges or fees" are defined as:

- (a) per check or electronic debit charges;
- (b) per deposit or electronic credit charges;
- (c) a fee in lieu of minimum balance;
- (d) FDIC insurance fees or FDIC account guarantee fees and/or NCUA insurance fees or NCUA account guarantee fees;
- (e) a sweep fee; and
- (f) a reasonable IOLTA account administrative fee.

Other financial institution service charges or fees shall not be deducted from IOLTA account interest and shall be the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. Nothing in this Rule shall be construed to require that a financial institution charge fees on an IOLTA account, nor does anything in this Rule prohibit a financial institution from waiving or discounting fees associated with an IOLTA account.

Section 10. Allowable reasonable service charges or fees in excess of the interest earned on any one IOLTA account may not be deducted from interest earned on any other IOLTA account.

Section 11. If the Tennessee Bar Foundation, for any reason, determines a financial institution does not meet the requirements of this rule, the Tennessee Bar Foundation will notify the financial institution. The financial institution will be provided not less than thirty days to take corrective action that results in compliance with this rule.

Section 12. A lawyer, law firm or financial institution that objects to a determination of the Tennessee Bar Foundation that a financial institution is not an eligible institution under Section 1 through 10 of this Rule or a lawyer who objects to a determination of the Tennessee Bar Foundation that the lawyer is not eligible for an exemption under Section 14(e), may appeal such determination to the Board of Professional Responsibility in accordance with regulations adopted by the Board of Professional Responsibility.

Section 13. Interest transmitted shall, after deductions for the necessary and reasonable administrative expenses of the Tennessee Bar Foundation for operation of the IOLTA program, be distributed by that entity, in proportions it deems appropriate, for the following purposes:

- (a) To provide legal assistance to the poor;
- (b) To provide student loans, grants, and/or scholarships to deserving law students;
- (c) To improve the administration of justice; and
- (d) For such other programs for the benefit of the public as are specifically approved by the Tennessee Supreme Court.

Section 14. Unless exempt under this Section 14, every lawyer admitted to practice in Tennessee shall certify in the lawyer's annual registration statement required by Tennessee Supreme Court Rule 9, as a condition of licensure, that all funds in the lawyer's possession that are required pursuant to RPC 1.1 5(b) to be held in an IOLTA account are, in fact, so held and shall list the name(s) of the financial institution(s) and account number(s) where such funds are deposited. This certification shall be made on a form provided by the Board of Professional Responsibility and shall be submitted by the lawyer within the time period set forth in Rule 9 for the annual registration statement. A lawyer licensed in Tennessee is exempt, and shall so certify on the lawyer's annual registration statement, if:

(a) the lawyer is not engaged in the private practice of law in the State of Tennessee;

(b) the lawyer serves as a Judge, Attorney General, Public Defender, U.S. Attorney, District Attorney, in-house counsel registered pursuant to Tennessee Supreme Court Rule 7, Section 10.01, teacher of law, on active duty in the armed forces or employed by state, local or federal government and not otherwise engaged in the private practice of law;

(c) the lawyer does not have an office in Tennessee; however, for purposes of this Rule, a lawyer who practices, as a principal, employee, of counsel, or in any other capacity, with a firm that has an office in Tennessee shall be deemed for purposes of this Rule to have an office in Tennessee if the lawyer utilizes one or more offices of the firm located in Tennessee more than the lawyer utilizes one or more offices of the firm located in any other single state;

(d) under regulations adopted by the Board of Professional Responsibility under criteria established upon recommendation of the Tennessee Bar Foundation, the lawyer or law firm is exempted from maintaining an IOLTA account because such an IOLTA account has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(e) the lawyer is exempted by the Tennessee Bar Foundation from the application of this Rule following a written request for exemption by the lawyer and determination by the Tennessee Bar Foundation that no eligible financial institution (as defined and determined in accordance with this Rule 43) is located within reasonable proximity of that lawyer.

Section 15. As a part of the annual birth month registration process, as provided in Supreme Court Rule 9, the Board of Professional Responsibility shall receive and review a lawyer's certification required by Section 14. In the event a lawyer fails to submit the required certification or should the certification be facially defective, such noncompliance with this Rule will result in the following action:

(a) On or before the 15th day following the date on which the certification required by Section 14 is due, the Board of Professional Responsibility shall serve such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days following the mailing of the Notice. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompli-

ance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall submit to the Board of Professional Responsibility the lawyer's completed certification. In the event a lawyer fails to timely submit the lawyer certification required by this Rule and payment of the \$100.00 Noncompliance Fee by the 30th day following the mailing of the Notice, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(d) Each lawyer named in the Suspension Order entered by the Court shall submit to the Board of Professional Responsibility the lawyer certification required by the Rule and shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reinstatement from suspension under subsection (c). An attorney suspended by this Court who wishes to be reinstated and who has remained suspended for one year or less before the filing of a petition for reinstatement shall file with the Board of Professional Responsibility a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has filed the required lawyer certification and paid all fees imposed by this section. An attorney suspended by the Court pursuant to Subsection (c) who wishes to be reinstated and who has remained suspended for more than one year before the filing of a petition for reinstatement shall file with the Court a petition for reinstatement of the attorney's license to practice law demonstrating that the attorney has filed the required lawyer certification and paid all fees in compliance with this Rule, or, alternatively, demonstrating that the Suspension Order was entered in error as to the attorney. The petitioner shall serve a copy of the petition upon Disciplinary Counsel, who shall investigate the matter and file an answer to the petition within thirty days. The Court shall review the record and determine whether to grant or deny the petition for reinstatement. If the Court grants the petition, the Reinstatement Order shall provide that the attorney's reinstatement is effective as of the date of the attorney's payment of all penalties imposed or the date of the attorney's filing of the delinquent lawyer certification, or, alternatively, as of the date of entry of the Suspension Order if that Order was entered in error. No lawyer suspended under this Rule 43 may resume practice until reinstated by Order of the Supreme Court.

(e) Upon receipt of the lawyer's certification required by this Rule and payment of all fees imposed, the Board of Professional Responsibility shall forward the lawyer's completed certification to the Tennessee Bar Foundation.

(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

Section 16. Upon its receipt of a lawyer's certification under Section 14 of this Rule, the Tennessee Bar Foundation shall report monthly to the Board of Professional Responsibility any evidence of the lawyer's noncompliance known by the Tennessee Bar Foundation. Noncompliance with this Rule will result in the following action:

(a) On or before the 15th day following the date the Tennessee Bar Foundation provides its report to the Board of Professional Responsibility, the Board of Professional Responsibility shall serve each such lawyer a Notice of Noncompliance requiring the lawyer to remedy any deficiencies identified in the Notice within 30 days. Each lawyer to whom a Notice of Noncompliance is issued shall pay to the Board of Professional Responsibility a Noncompliance Fee of One Hundred Dollars (\$100.00). Such Noncompliance Fee shall be paid on or before the 30th day following the mailing of the Notice, unless the lawyer shows to the satisfaction of the Chief Disciplinary Counsel that the Notice of Noncompliance was erroneously issued, in which case no such fee shall be due.

(b) On or before the 30th day following the mailing of the Notice, each lawyer on whom a Notice of Noncompliance is served also shall file with the Board of Professional Responsibility an affidavit, in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied. In the event a lawyer fails to timely remedy any such deficiency or fails to timely file such affidavit, the lawyer shall pay to the Board of Professional Responsibility, in addition to the Noncompliance Fee, a Delinquent Compliance Fee of Two Hundred Dollars (\$200.00).

(c) On or before the 45th day following the mailing of each month's Notices of Noncompliance, the Board of Professional Responsibility shall:

(i) prepare a proposed Suspension Order listing all lawyers who were issued Notices of Noncompliance for that month's birth month registration cycle and who failed to remedy timely their deficiencies;

(ii) submit the proposed Suspension Order to the Supreme Court; and

(iii) serve a copy of the proposed Suspension Order on each lawyer named in the Order.

(d) The Supreme Court will review the proposed Suspension Order and enter such order as the Court may deem appropriate suspending the law license of each lawyer deemed by the Court to be not in compliance with the requirements of this Rule.

(e) Each lawyer named in the Suspension Order entered by the Court shall file with the Board of Professional Responsibility an affidavit in the form specified by the Board of Professional Responsibility, attesting that any identified deficiencies have been remedied and shall pay to the Board of

Professional Responsibility, in addition to the Noncompliance Fee and the Delinquent Compliance Fee, a Five Hundred Dollar (\$500.00) Suspension Fee as a condition of reinstatement from suspension under subsection (d). Payment of all fees imposed by this section shall be a requirement for compliance with this Rule and for reinstatement. Upon satisfaction of this condition of reinstatement, and if the lawyer is otherwise eligible for reinstatement, Chief Disciplinary Counsel will recommend to the Supreme Court that the Court reinstate the lawyer's law license. No lawyer suspended under this Rule 43 may resume practice until reinstated by Order of the Supreme Court.

(f) All notices required or permitted to be served on a lawyer under the provisions of this Rule shall be served by United States Postal Service Certified Mail, return receipt requested, at the preferred address shown in the most recent registration statement filed by the lawyer pursuant to Supreme Court Rule 9 and shall be deemed to have been served as of the postmark date shown on the Certified Mail Receipt.

Section 17. The information contained in the statements forwarded to the Tennessee Bar Foundation under Section 14 and/or Section 15 of this Rule shall remain confidential other than as to Tennessee Supreme Court or the Board of Professional Responsibility. The Tennessee Bar Foundation shall not release any information contained in such statements other than as a compilation of data from such statements, except as directed in writing by the Tennessee Supreme Court or the Board of Professional Responsibility or in response to a subpoena. [As amended by order filed and effective July 8, 2009; and order filed February 20, 2013, nunc pro tunc, effective January 1, 2012; amended by order filed Dec. 21, 2015, eff. Jan. 1, 2016; further amended by order filed October 4, 2016, effective upon filing; amended by order filed April 20, 2020, effective immediately.]

Compiler's Notes. In its order filed August 30, 2013, the Supreme Court provided: "On August 30, 2013, the Court adopted revised Tenn. Sup. Ct. R. 9, effective January 1, 2014. The Court has determined that certain revisions are necessary to Tenn. Sup. Ct. R. 21, 33, and 43 in order to make those Rules consistent with revised Tenn. Sup. Ct. R. 9.

"After due consideration, the Court hereby amends Tenn. Sup. Ct. R. 21, 33, and 43 as set out in the attached Appendix to this Order. The effective date of these amendments is January 1, 2014."

In its order filed October 4, 2016, the Supreme Court provided: "On July 13, 2016, the Board of Professional Responsibility of the Supreme Court of Tennessee ("BPR") and the Tennessee Bar Foundation filed a petition asking the Court to amend Rule 8, RPC 1.15 and Rule 43 of the Rules of the Tennessee Supreme Court to allow attorneys to deposit trust funds in federally insured credit unions.

"On August 18, 2016, the Court filed an order soliciting public comments on the proposed amendments. The deadline for submitting written comments was Monday, September 19, 2016. The Court received only one written com-

ment during the comment period, a comment from the Tennessee Credit Union League supporting the proposed amendments and suggesting that the Court also amend Rule 9, section 35.2(a) of the Rules of the Tennessee Supreme Court to create consistency among the rules.

"After due consideration, the Court hereby adopts the amendments to Rule 8, RPC 1.15, Rule 9, section 35.2(a), and Rule 43 of the Rules of the Tennessee Supreme Court, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

By order dated April 20, 2020, the Supreme Court provided that: "On December 6, 2018, this Court entered an order soliciting written comments on proposed amendments to Tennessee Supreme Court Rule 43, regarding interest on lawyers' trust accounts. After the expiration of the public-comment period, the Court has considered further revisions to the proposed amendments.

"On December 13, 2019, the Court entered an order soliciting written comments to the revised proposed amendments. During the second comment period, the Court received written comments from the Board of Professional

Responsibility ("BPR"). The Court thanks the BPR for its input.

"After due consideration, the Court hereby adopts the amendments to Tennessee Supreme

Court Rule 43, as set out in the attached Appendix. The amendments shall take effect immediately upon the filing of this Order."

Rule 44. Regulation of Lawyer Intermediary Organizations. This Rule shall govern intermediary organizations as defined in RPC 7.6(a). An intermediary organization is a lawyer advertising cooperative, lawyer referral service, prepaid legal service provider, or similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of fee-generating legal services or the payment for or provisions of legal services to the organization's customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.

A. Registration and Reporting Requirements (1) Each intermediary organization shall file an initial registration statement and annual registration statements with the Board of Professional Responsibility, each of which shall be certified by an officer or authorized representative of the organization.

(2) The initial registration statement shall set forth or be accompanied by the following:

(a) A copy of the organization's basic organizational document, including the articles of incorporation, articles of association, articles of organization, operating agreement, partnership agreement, trust agreement, or other organizational document and all amendments, addenda, or exhibits to any such document.

(b) A copy of all bylaws, operating agreements, rules, regulations, or similar documents, if any, regulating the conduct of the organization's internal affairs.

(c) A list of the names, addresses, and official positions of, and biographical information concerning, any individuals who are responsible for conducting the organization's affairs.

(d) A list of the names, addresses, and official positions of, and biographical information concerning, any shareholder or beneficial owner of an ownership interest in the organization of 5% or greater.

(e) A list of the names, addresses, and Board of Professional Responsibility disciplinary numbers of all lawyers participating in the organization and providing legal services for Tennessee residents.

(f) A specimen copy of the form of all contracts made or to be made between the organization and any participating lawyers.

(g) A specimen copy of the form of any contract made or to be made between the organization and any person, corporation, partnership, or other entity for the performance on the organization's behalf of any function, including, but not limited to, marketing, administration, enrollment, investment management, and subcontracting for the provision of legal services.

(h) A specimen copy of the form of any group or prepaid legal services contract that is to be issued to employers, unions, trustees, individuals, or other organizations and a specimen copy of any form of evidence of coverage to be issued to subscribers.

(i) A schedule of rates and charges for each contract to be used.

(j) A description of any proposed marketing efforts.

(k) A description of the organization's grievance or complaint procedure for its customers, members, or beneficiaries.

(l) As to prepaid legal insurance providers, a copy of a Certificate of Authority to sell legal insurance issued by the Commissioner of the Tennessee Department of Commerce and Insurance.

(m) A copy of the organization's most recent financial statements audited by an independent certified public accountant.

(3) The annual registration statements shall set forth or be accompanied by the following:

(a) A copy of the organization's most recent financial statements audited by an independent certified public accountant.

(b) A narrative description of any material changes that may have occurred since the organization's last filing with the Board, including updated or current copies of any information or documents previously filed with the Board of Professional Responsibility that have materially changed.

(4) The following organizations are exempt from filing initial or annual registration statements with the Board:

(a) Legal aid or public defender offices:

(i) operated or sponsored by a duly accredited or approved law school; or

(ii) operated or sponsored by a governmental agency;

(b) A military legal assistance office;

(c) A lawyer referral or legal aid service operated by the Chattanooga Bar Association, Knoxville Bar Association, Memphis Bar Association, Nashville Bar Association, Tennessee Bar Association, or Tennessee Trial Lawyers Association.

B. Compliance An intermediary organization complies with this Rule if it registered as provided in Section F and has complied with the requirements of Sections A, C, D, and all of the following additional requirements:

(1) The organization shall not be owned or controlled by any participating lawyer, a law firm with which a participating lawyer is associated, or a lawyer with whom a participating lawyer is associated in a firm.

(2) The customer, member, or beneficiary of the organization, and not the organization, shall be the client of the participating lawyer.

(3) The organization shall assert no improper influence upon, nor shall it infringe upon, the attorney-client relationship or the independent professional judgment of the participating lawyer.

(4) The organization shall not limit the objectives of the representation to be provided by participating lawyers to its customers, members, or beneficiaries, or the means to be used to accomplish those objectives, if such a limitation would materially impair the lawyer's ability to provide the client with the quality of representation that would be provided to a client who had not been referred to the lawyer by the organization.

(5) The organization shall not request or require that a participating lawyer reveal information that is privileged or protected by RPC 1.6.

(6) The organization shall not request or require that a participating lawyer take any action prohibited by, or fail to take any action required by, the Tennessee Rules of Professional Conduct.

(7) Customers, members, or beneficiaries of the organization shall be informed that they may file a complaint of unethical conduct by a participating lawyer with the Board of Professional Responsibility, and informed of the method by which they may do so.

(8) Any organization that is a prepaid legal insurance provider shall comply with Tenn. Code Ann. Title 56, Chapter 43, known as the Tennessee Legal Insurance Act.

(9) The organization shall permit the participation of not less than four (4) lawyers licensed to practice in Tennessee, not associated with each other in a firm, and each of whom maintains an office in the geographical area served by the organization; provided, however, that the organization may require such participating lawyers to:

(a) meet reasonable and objectively determinable standards of competence and experience; and

(b) pay a reasonable participation fee in conformance with RPC 5.4(a).

(10) The organization shall not condition referral of its customers, members, or beneficiaries to participating lawyers upon a preliminary determination by the organization that the client's claims or defenses have merit or economic value; however, the organization may perform call screening as necessary to determine the applicability and availability of appropriate non-legal services.

(11) The organization shall utilize reasonable procedures to assure that participating lawyers are properly licensed and competent to handle the matters referred to them.

(12) The organization shall utilize reasonable procedures to provide substitute counsel in the event that a lawyer to whom a matter is referred cannot undertake or continue the representation in compliance with the Rules of Professional Conduct or this Rule.

(13) If the organization is a not-for-profit lawyer referral service, it may charge a fee calculated as a percentage of legal fees in compliance with RPC 5.4(a)(6).

(14) The organization shall establish and implement a reasonable grievance or complaint procedure for the resolution of complaints or grievances by customers, members, or beneficiaries who are dissatisfied with the services or fees provided by the organization or its participating lawyers.

(15) An organization shall apprise itself of any public disciplinary history of any participating lawyer and shall, when appropriate, review the files of the Board of Professional Responsibility concerning any such public discipline imposed on any participating lawyer before allowing that lawyer to participate in providing services.

C. Advertising and Marketing Requirements An intermediary organization shall not:

(1) Make a statement about its services, its participating lawyers, or the services they will or may provide, that would violate RPC 7.1 if made by a

lawyer.

(2) An intermediary organization shall not identify any of its participating lawyers as specialists, as specializing in, or as certified or recognized as a specialist in a particular field of law unless all participating lawyers are certified as specialists in the identified field of law by the Tennessee Commission on Continuing Legal Education and Specialization.

(3) If a significant motive for the solicitation is the pecuniary gain of the organization or its participating lawyers,

(a) Solicit employment for its participating lawyers in specific matters by in person, live-telephone, or real-time electronic contact with a person who has not initiated the contact; or

(b) Solicit employment for its participating lawyers by a writing, recording, telegram, facsimile, computer transmission or other mode of communication directed to a specifically identified person who has not initiated the contact communication if a participating lawyer would be prohibited from doing so by RPC 7.3(b) or (c).

D. Qualification of Lawyers An approved intermediary organization shall take reasonable steps to determine that all of its participating lawyers meet the following requirements:

(1) That the lawyer is on active status and in good standing with the Board of Professional Responsibility and with the lawyer licensing authority in each jurisdiction in which the lawyer is licensed;

(2) That the lawyer is in compliance with the CLE requirements of Rule 21;

(3) That the lawyer agrees to permit the organization to release and furnish any information from the lawyer's application to the lawyer's clients or potential clients; and

(4) That the lawyer agrees to participate in and abide by the organization's procedures concerning grievances or complaints by customers, members, or beneficiaries.

E. Other Requirements Imposed by Organization Nothing in this Rule prohibits an organization registered under this Rule from imposing upon its participating lawyers, and a registered organization may impose upon its participating lawyers, other lawful requirements as a condition of participation, including, for example, requirements that participating lawyers waive any confidentiality of disciplinary complaints or proceedings under Supreme Court Rule 9, Section 32, that participating lawyers agree to participate in the arbitration of disputes concerning their fees or services provided in connection with their participation in the organization, or that participating lawyers maintain professional liability insurance at certain levels. Further, accurate communications concerning any such requirements in any advertising by the organization do not violate any provision of this Rule. An organization may establish specific subject matter panels of participating lawyers, whose eligibility for such panels shall be determined on the basis of experience and other substantial objectively determinable criteria.

F. Registration (1) If an organization complies in all material respects with this Rule, the Board of Professional Responsibility shall register the organization under this Rule. If an organization fails to comply in any material

respect with this Rule, the Board shall deny registration to the organization. If an organization registered under this Rule is found to no longer be in compliance with the requirements of this Rule, the Board shall revoke the registration of the organization.

(2) All documents or information provided to the Board of Professional Responsibility by or on behalf of the organization shall be open for public inspection in the offices of the Board of Professional Responsibility during its regular business hours. The Board may charge a reasonable fee for copying any such documents or information.

G. Amendments to This Rule Any interested person or organization may petition this Court to change this Rule. (Amended by order filed August 18, 2014, effective upon filing.)

Compiler's Notes. The Supreme Court issued the following order on June 29, 2004:

"On April 14, 2004, the Board of Professional Responsibility ('Board') filed a 'Petition to Reconsider, Alter or Amend' Rule 8, RPC 7.6 and Rule 44 of the Rules of the Supreme Court of Tennessee. In summary, the petition states that the Board 'mailed initial registration packets and forms to twenty-six (26) organizations which were preliminary [sic] identified as potential intermediary organizations[.]' The petition states that the Board has received responses from a number of those organizations, some of which assert that they are not intermediary organizations for purposes of Rule 44. The petition asks the Court to alter or amend Rule 8, RPC 7.6 and Rule 44 'for clarification and guidance to the Board relating to the issues identified [in the petition].' The petition, however, does not explicitly state any particular legal issue(s), nor does it present the Court with any specific recommendations as to amendments that the Board deems advisable or necessary. For the reasons stated below, the Court respectfully denies the petition.

"We begin by observing that Rule 44 serves to implement the provisions of Rule 8, RPC 7.6 ('RPC 7.6'). RPC 7.6 provides:

"Rule 7.6 Intermediary Organizations

"(a) An intermediary organization is a lawyer-advertising cooperative, lawyer referral service, prepaid legal insurance provider, or a similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of fee-generating legal services or the payment for or provision of legal services to the organization's customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.

"(b) A lawyer shall not seek or accept a referral of a client, or compensation for representing

a client, from an intermediary organization if the lawyer knows or reasonably should know that:

"(1) the organization:

"(i) is owned or controlled by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm; or

"(ii) is engaged in the unauthorized practice of law; or

"(iii) engages in marketing activities that are false or misleading or are otherwise prohibited by the Board of Professional Responsibility; or

"(iv) has not registered with the Board of Professional Responsibility and complied with all requirements imposed by the Board; or

"(2) the lawyer will be unable to represent the client in compliance with these Rules.

"(Emphasis added.)

"As RPC 7.6 clearly indicates, the burden is on the lawyer who wishes to participate in the activities of an 'intermediary organization' to confirm that the organization is in compliance with Rule 44. If the organization is an 'intermediary organization' listed in RPC 7.6 and Rule 44, and if the organization is not in compliance with the requirements of Rule 44, the lawyer may not ethically 'seek or accept a referral of a client, or compensation for representing a client, from [the] intermediary organization.' If the lawyer does seek or accept a referral or compensation from a non-complying organization, he or she is subject to disciplinary sanctions for violating RPC 7.6. Thus, it is the lawyer who can be sanctioned for participating with a non-complying intermediary organization, and not the intermediary organization itself. The text of Rule 44 supports the foregoing conclusion.

"Rule 44(F)(1) ('Registration') provides:

"(1) If an organization complies in all material respects with this Rule, the Board of Professional Responsibility shall register the organization under this Rule. If an organization fails to comply in any material respect with this Rule, the Board shall deny registration to the organization. If an organization registered un-

der this Rule is found to no longer be in compliance with the requirements of this Rule, the Board shall revoke the registration of the organization.

“Under Rule 44(F)(1), the Board’s power over an intermediary organization is limited to: (1) registering a complying organization; (2) denying registration to a non-complying organization; or (3) revoking the registration of an organization that is no longer in compliance. If an organization asserts that it is not an intermediary organization and therefore does not have to register with the Board, Rule 44 does not authorize the Board to take any enforcement action against the organization. In such situations, the burden of risk (under Rule 8, RPC 7.6) falls on any lawyer who participates in an unregistered intermediary organization’s activities (e.g., lawyer advertising cooperative, lawyer referral service, or prepaid legal service provider). Such a lawyer is subject to the filing of a disciplinary complaint against him or her for violating RPC 7.6. If a disciplinary com-

plaint were to be filed, the status of the particular organization then would be resolved in the disciplinary proceeding against the lawyer.

“Because the petition does not state any specific legal issue(s) to be resolved and does not request any specific amendment(s) of RPC 7.6 and/or Rule 44, and based upon the foregoing analysis of those two rules, the Court concludes that the Petition to Reconsider, Alter or Amend should be DENIED. Due to the nature of the petition and in recognition of the valuable public service performed by the Board of Professional Responsibility, the Court hereby waives the costs relating to the petition.

“IT IS SO ORDERED.”

Disciplinary Board Opinions. Activities of company that produces and places television commercials for attorneys who advertise jointly do not constitute the activities of an “intermediary organization” as defined in Supreme Court Rule 44 and Rule 8, RPC 7.6. Formal Ethics Opinion No. 2006-F-152 (6/16/06).

Rule 45. Americans with Disabilities Act. The administrative director of the courts is authorized to establish any policies and procedures that may be necessary to assist courts with compliance with the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* The Supreme Court shall approve any such policies and procedures prior to implementation. Participants in the judicial system shall comply with any policies and procedures that may be implemented. This rule shall apply to all courts in this state, including without limitation, municipal courts, general sessions courts, juvenile courts, circuit courts, chancery courts, criminal courts, and the respective appellate courts. [As adopted by order filed March 21, 2005.]

Commentary. Policies and procedures that are implemented pursuant to this rule will be available by contacting the administrative of-

fice of the courts or accessing the website at www.tsc.state.tn.us.

Rule 46. Electronic Filing.

Compiler’s Notes. In its order filed November 6, 2015, the Supreme Court provided that: “Rule 46 (‘E-Filing Rule’), Rules of the Tennessee Supreme Court, was originally adopted on July 21, 2006, and took effect on August 1, 2006. The Court’s adoption of the rule resulted from the work and recommendations of the Electronic Filing Task Force established by the Court on November 18, 2004. As adopted, the rule authorized the establishment of a voluntary electronic-filing system in Tennessee’s appellate courts. The rule provided for the evaluation of the e-filing system after a period of one year and for the Court then to determine whether to make e-filing mandatory in the appellate courts. For several reasons, however, the voluntary e-filing system authorized by the rule was never implemented.”

“On August 12, 2015, the Court filed an order

regarding a proposed revision of Rule 46. (An amended order was filed on August 17, 2015, allowing written comments to be submitted via e-mail, in addition to regular mail. The text of the proposed revision of Rule 46 set out in the second order, however, was unchanged from the proposal set out in the initial order filed on August 12, 2015.) The order stated that the Court was considering the establishment of a new voluntary e-filing system in the appellate courts, with a long-term view toward adopting a mandatory e-filing system in the appellate courts. To that end, the Court proposed repealing the current Rule 46 in its entirety and replacing it with a revised Rule 46 that was set out in the appendix to that order. The Court solicited public comments on the proposed revision and set September 28, 2015, as the

deadline for submitting comments to the Appellate Court Clerk.

“After due consideration of the written comments received from various bar organizations and from individual attorneys, and also after additional input from the Appellate Court Clerk and representatives of the intermediate appellate courts, the Court hereby repeals the current Rule 46 in its entirety and replaces it with the revised Rule 46 set out in the appendix to this order. The effective date of this amendment, however, shall be delayed, pending further order of the Court, to allow the Administrative Office of the Courts to issue a request for

proposal and thereafter complete the contractual process for implementing the revised rule.”

In its order dated June 22, 2018, the Supreme Court provided that: “By Order filed June 19, 2018, the Court amended Revised Rule 46 of the Rules of the Tennessee Supreme Court in the form set out in the appendix to that Order, effective July 9, 2018. It has come to the Court’s attention that there was a typographical error in amended Revised Rule 46, Section 3, Rule 3.02 (2)(a), as contained in that appendix. It is therefore ordered that the appendix to the Order filed June 19, 2018 is withdrawn and the corrected appendix attached to this Order is substituted in its place.”

Introduction.

The Supreme Court intends to adopt electronic filing (“e-filing”) in the appellate courts at a future date. This revised Rule 46, adopted effective July 9, 2018, is a transitional rule authorizing parties to e-file documents voluntarily until such time that the Court adopts e-filing on a permanent basis.

Section 1. General Provisions.

Rule 1.01. Definitions.

a. “Appellate Court” or “Court” means the Tennessee Supreme Court, Tennessee Court of Appeals, or Tennessee Court of Criminal Appeals.

b. “Certificate of Compliance” means a signed certification by the E-filer that is attached to the filed brief and that certifies that the brief complies with the requirements set forth in Section 3, Rule 3.02 of this Rule. The Certificate must state the number of words contained in the brief.

c. “Clerk” means the Clerk of the Appellate Courts.

d. “E-filing fee” is a fee charged in connection with electronic filing that is in addition to statutory filing fees.

e. “Document” means a motion, application, request, exhibit, brief, memorandum of law, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules of the Court of Criminal Appeals.

f. “E-file” or “e-filing” means the electronic transmission of documents in cases pending in the appellate courts, using the dedicated e-filing system maintained by the clerk.

g. “E-filer” means a registered user who submits a document for e-filing through the e-filing system.

h. “E-filing system” means a web-based system maintained by the clerk for the purpose of providing a means for e-filers to transmit documents to the clerk for filing.

i. “Electronic signature” means a signature line beginning with an “s/” followed by the typewritten name of the signatory.

j. “E-Service” means the electronic transmission of e-filed documents to a party or a party’s attorney through the e-filing system.

k. “Portable Document Format” or “PDF” means the computer file format developed by Adobe Systems Incorporated for representing documents in a

manner that is independent of the original application software, hardware, and operating system used to create those documents.

l. “Registered user” means any person listed in section 2.01 who has properly registered with the clerk to e-file documents in the appellate courts.

m. “Terms-of-use agreement” means that agreement established by the clerk that sets forth the parameters for use of the e-filing system by all registered users.

n. “Transaction receipt” means an e-mail confirmation that is transmitted to an e-filer after an e-filer has submitted a document to the clerk to be filed through the e-filing system. The transaction receipt displays the date and time the document was submitted by the e-filer. The transaction receipt may serve as the e-filer’s proof of filing.

o. “User guide” means the court’s written guide for using the e-filing system, which shall be posted as a PDP document on the appellate courts’ website (<http://www.tncourts.gov/>). All e-filers should periodically check the appellate courts’ website for updates to the user guide. [As amended by order filed June 22, effective July 9, 2018.]

Compiler’s Notes. In its order dated June 22, 2018, the Supreme Court provided that: “By Order filed June 19, 2018, the Court amended Revised Rule 46 of the Rules of the Tennessee Supreme Court in the form set out in the appendix to that Order, effective July 9, 2018. It has come to the Court’s attention that there

was a typographical error in amended Revised Rule 46, Section 3, Rule 3.02 (2)(a), as contained in that appendix. It is therefore ordered that the appendix to the Order filed June 19, 2018 is withdrawn and the corrected appendix attached to this Order is substituted in its place.”

Rule 1.02. Application of the Rule. This rule applies to all cases filed in the appellate courts. Except as provided in this rule, any document may be e-filed that otherwise would be filed in the appellate court as a paper document in accordance with the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules of the Court of Criminal Appeals. Such e-filings shall constitute the official filing of such documents for purposes of the foregoing rules.

The appellate court may, on motion for good cause shown or on the court’s own initiative, waive any provision of this rule.

Section 2. Registered Users.

Rule 2.01. Registered Users. The following persons may e-file documents upon completion of the registration requirements of this rule:

- a. Attorneys licensed to practice law in Tennessee;
- b. Attorneys admitted or who seek to be admitted pro hac vice pursuant to Tenn. Sup. Ct. R. 19.

Rule 2.02. Registration. Any person listed in section 2.01 who desires to e-file documents in the appellate courts shall register with the clerk. Upon receipt of a properly executed terms-of-use agreement, the e-filing system shall generate to the registered user an initial confidential log-in name and password to access the e-filing system. Each registered user shall safeguard the registered user’s log-in name and password and any e-filing shall be

presumed authorized by the registered user whose log-in name and password were used to transmit said e-filing. Except as expressly permitted in this rule, documents shall be e-filed using the log-in name and password of the registered user who signed the document being filed. Registration with the clerk constitutes consent by the registered user to receive electronic service of all documents and electronic notices issued by the appellate court or the clerk.

Rule 2.03. Duty of Registered User to Update Contact Information.

Registered users shall change their profile maintained in the e-filing system immediately upon any change in the registered user's name, law firm name, delivery address, telephone number, fax number, or e-mail address. E-service on an obsolete e-mail address shall constitute valid service on the registered user.

Rule 2.04. User Guide. The clerk will provide all registered users with access to an online user guide to assist them in e-filing.

Section 3. Filing and Service Procedures.

Rule 3.01. Time and Effect of E-Filing. a. Filed upon transmission. Subject to acceptance by the clerk pursuant to paragraph (b), any document electronically submitted for filing shall be considered filed with the court when the transmission to the court's e-filing system is completed. Upon receipt of the transmitted document, the e-filing system shall automatically e-mail a transaction receipt to the e-filer, stating that the transmission of the document was completed and also stating the date and time of the document's receipt. The e-filer is responsible for verifying that the court received and filed the document transmitted. Absent confirmation of receipt, there is no presumption that the court received and filed the document. The transaction receipt shall serve as proof of filing.

b. Review by clerk. The clerk may review the document to determine if it conforms with the applicable filing requirements. If the clerk rejects the document for filing because it does not comply with the applicable filing requirements or because any required filing fee has not been paid, the clerk must promptly send notice to the registered user who filed the document; the notice must set forth the reason(s) the document was rejected for filing. If the clerk rejects the filing, the clerk may, in his or her discretion, give the filing party up to 3 days to correct the deficient filing; upon the filing party's timely submission of a corrected filing, the filing shall relate back to the date of the initial filing. Notification that the clerk has accepted the document for filing is not required.

c. "Filed" Stamp. E-filed documents accepted for filing by the clerk shall have a "filed" stamp affixed by the clerk. The clerk's stamp of an e-filed document must contain the following: "Electronically Filed/[Date] and Time/[Name of Clerk]." This "electronically filed" stamp has the same force and effect as a manually affixed "filed" stamp of the clerk.

d. Time of filing. Any document e-filed by 11:59 p.m. at the clerk's local time in the grand division in which the appeal lies shall be deemed to be filed on that

date, so long as it is accepted by the clerk upon review.

e. Documents Filed by the Court. The court may electronically transmit orders, opinions, judgments, and other court-issued documents through the appellate courts' efilng system.

When a document electronically transmitted by the court for filing by the clerk requires the signature of the judge(s), clerk, or authorized deputy clerk, the signature may be reflected at the end of the document by means of an electronic signature in the format: "s/ [judge's/clerk's/deputy clerk's name]," followed by the appropriate title (i.e., "Judge," "Clerk," "Deputy Clerk"). Any order, opinion, judgment, or other court-issued document filed electronically without the handwritten signature of the judge(s), clerk, or authorized deputy clerk but containing an approved electronic signature has the same effect as if the judge or clerk had signed a paper copy of the filing.

Rule 3.02. Format of Documents.

a. All e-filed documents shall be formatted in accordance with the terms-of-use agreement, the following requirements, and the applicable rules of the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, and the Rules of the Court of Criminal Appeals governing formatting of paper-filed documents in the appellate courts, except that the provisions of the Rules of Appellate Procedure, the Rules of the Court of Appeals, and the Rules of the Court of Criminal Appeals relating to the number of copies, the color of the cover page, and the types of paper shall not apply. To the extent that there is any conflict between any other procedural rules and the provisions of this Rule concerning the format of documents that are e-filed, the provisions of this Rule shall govern.

1. Word limitations.

Except by order of the Court, briefs shall comply with the following word limitations:

- (a) Principal briefs shall be limited to 15,000 words.
- (b) Reply briefs shall be limited to 5,000 words.
- (c) Amicus briefs shall be limited to 7,500 words.

The following sections of a brief shall be excluded from these word limitations: the Title/Cover page, Table of Contents, Table of Authorities, and Certificate of Compliance.

2. Text density.

- (a) Line spacing – 1.5 inches
- (b) Margins – 1 inch

3. Font and font size.

- (a) Font – Any font within the Century Family
- (b) Font size – 14 point font size
- (c) Footnotes – Footnotes shall be in the same font and font size as the text.

4. Justification.

Full justification is required.

5. Pagination.

Pagination shall begin with page 1. For briefs, page 1 will be the cover page.

6. Navigation.

The use of internal hyperlinks and bookmarks is encouraged.

7. The use of external hyperlinks to legal authorities is encouraged. External hyperlinks to legal authorities may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material in a filed document. The Court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink.

b. All original documents (e.g., applications, briefs, motions, memoranda of law, and similar documents) that are e-filed shall be prepared through direct conversion from the word processing file to Portable Document Format and not through scanning of the original paper document. Notwithstanding the foregoing sentence, all attachments and appendices containing photocopies of documents may be scanned into Portable Document Format. E-filed PDF documents shall be text searchable, if possible.

c. Certificate of Compliance. An e-filed brief must include a Certificate of Compliance. The Certificate's statement of the number of words contained in the brief may be based upon the word count of the word processing system used to prepare the brief. [As amended by order filed June 22, effective July 9, 2018.]

Compiler's Notes. In its order dated June 22, 2018, the Supreme Court provided that: "By Order filed June 19, 2018, the Court amended Revised Rule 46 of the Rules of the Tennessee Supreme Court in the form set out in the appendix to that Order, effective July 9, 2018. It has come to the Court's attention that there

was a typographical error in amended Revised Rule 46, Section 3, Rule 3.02 (2)(a), as contained in that appendix. It is therefore ordered that the appendix to the Order filed June 19, 2018 is withdrawn and the corrected appendix attached to this Order is substituted in its place."

Rule 3.03. Payment of Filing Fees. a. Unless excused by statute or the Court, statutory filing fees or other statutorily permitted fees and taxes required to be paid at the time of filing of an e-filed document must be paid with an approved form of electronic payment at the time of e-filing.

b. E-filing fees paid by the filing party are recoverable costs for purposes of Tenn. R. App. P. 40(c).

Rule 3.04. Signatures. a. Registered User's Signature. A registered user's use of the assigned log-in name and password to e-file a document serves as that user's signature on that document for all purposes. The identity of the e-filer must be reflected at the end of the document by means of an electronic signature, followed by the user's name, business address, telephone number, e-mail address, and number assigned by the Board of Professional Responsibility, if applicable.

b. Multiple signatures. An e-filer e-filing a document requiring the signatures of multiple attorneys (e.g., stipulations) must list thereon the names of all other attorney signatories and include their electronic signatures. By e-filing such a document, the e-filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the e-filer has their permission to e-file the document. In the alternative, the e-filer may submit a scanned document containing all necessary signatures.

- c. **Signatures Under Penalty of Perjury and Notarized Signatures.** Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be e-filed, provided that the declarant or notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned as a PDF in a format that accurately reproduces the original signatures and contents of the document and electronically submitted for filing.
- d. **Effect of Signatures on E-Filed Documents.** Any filing made under this rule shall bind the signatory as if a paper document were physically signed and filed. An e-filing therefore shall function as the signatory’s attestation to the truthfulness of an e-filed affidavit, declaration, or certification, or as a validly signed document for any other purpose under the Tennessee Rules of Appellate Procedure or other court rule.

Section 4. Electronic Service.

Rule 4.01. Automatic Service by E-Filing System. Upon the receipt of an e-filed document, the e-filing system will automatically generate and send by-mail a notice of filing along with the document to all registered users participating in the case. This automatically generated notice shall constitute proper service of the e-filed document on those registered users and shall have the same legal effect as service of a paper document under Tenn. R. App. P. 20. Independent service, either by paper or otherwise, need not be made on any registered user receiving e-service. Attorneys and self-represented parties who did not receive e-service must be served by the e-filer through the conventional means of service set forth in Tenn. R. App. P. 20.

Rule 4.02. E-Service of Documents Filed by the Court. The clerk’s e-service on a registered user of a notice, order, opinion, or judgment filed by the court shall constitute proper service and shall satisfy the notice requirements of the Tennessee Rules of Appellate Procedure, including the mailing requirements of Tenn. R. App. P. S(c), 23, and 38.

Section 5. Effect of Technical Failure in E-Filing.

Rule 5.01. Motion to File Document Nunc Pro Tunc. If the e-filing does not occur because of: (1) a technical error in the transmission of the document to the clerk, which error was unknown to the sending party, (2) a failure to process the electronic document when received by the clerk, (3) rejection of the transmitted document by the court or clerk, or (4) other technical problems experienced by either the e-filer or the clerk, the court may, upon motion of the filing party, enter an order directing that the document be filed nunc pro tunc to the date the document was first attempted to be filed electronically. If the court directs the filing of the document nunc pro tunc, the court also shall extend the date for filing any response to the delayed filing and may extend the period within which any other right, duty, or other act must be performed.

Rule 5.02. E-Filing System Outage. In the event the e-filing system is offline for technical reasons for a significant portion of a particular day, the clerk, in his or her discretion, is authorized to issue a written declaration that the e-filing system is unavailable for filing on that day, in which event all filings due on that day from Registered Users shall be deemed to be timely if filed the following day. If the clerk issues such a declaration, no party is required to file a motion seeking permission to file a document nunc pro tunc, pursuant to section 5.01. [Implemented by order filed July 21, 2006; effective August 1, 2006; and as repealed in its entirety and replaced by order filed November 6, 2015; effective date shall be delayed, pending further order of the Court, to allow the Administrative Office of the Courts to issue a request for proposal and thereafter complete the contractual process for implementing the revised rule.]

Rule 46(A). Electronic Service of Papers E-Filed Pursuant to Local Rules of Court.

- (1) For purposes of this Rule, the following definitions shall apply:
 - (a) “E-file” or “E-filing” means the electronic transmission of documents in cases pending in the court, using the dedicated E-Filing system maintained by the clerk of the court.
 - (b) “E-Filer” means a registered user who e-files a document.
 - (c) “E-Filing system” means a system adopted by any Circuit, Chancery, Criminal, Probate, Juvenile or General Sessions Court Clerk that allows for the e-filing of documents and is in compliance with the technological standards promulgated by this Court.
 - (d) “E-service” or “E-served” means the automatically generated electronic transmission, by and through an e-filing system, of a notice to all participants in a case who are registered users that a document has been e-filed.
 - (e) A “registered user” is a person who has properly registered with and has been authorized to use an e-filing system for the e-filing of documents in accordance with the requirements of a local rule of court. A registered user is deemed to have consented to receive e-service and is responsible for maintaining a valid and current e-mail address and keeping same up to date in the e-filing system.
 - (f) “Documents” that may be e-served under this Rule include only those items that must be served pursuant to Tenn. R. Civ. P. 5.01, Tenn. R. Crim. P. 49, Tenn. R. Juv. P. 106, and any similar General Sessions Court rule.
- (2) Any Circuit, Chancery, Criminal, Probate, Juvenile or General Sessions Court that has, by local rule of court, allowed documents to be filed, signed or verified by a registered user of an e-filing system shall allow such documents to be e-served. E-service shall constitute proper service of the e-filed document on a registered user and shall have the same legal effect as service of a paper document under the applicable rules of procedure. Independent conventional service of an e-filed document, either by paper or otherwise, need not be made by an e-filer on any registered user, unless otherwise ordered by the court.
- (3) Any (A) lawyer representing a person, party or participant in the case, or (B) pro se person, party or participant in the case, who is either (i) not a registered user of the e-filing system or (ii) known by the e-filer not to have

been e-served, must be served by the e-filer through the conventional means of service set forth in the applicable rules of procedure.

(4) Unless ordered otherwise by the court, a court clerk may, through the e-filing system, transmit to registered users all notices, orders, opinions, or judgments filed by the court or court clerk, which transmission shall constitute proper service and shall satisfy the notice requirements of Tenn. R. Civ. P. 58 or any other applicable rules of procedure.

(5) The court has the discretion, for good cause shown, to order that service, other than e-service, be required in a particular case. [Adopted effective March 28, 2019.]

Compiler’s Notes. In its order filed March 28, 2019, the Supreme Court provided “By order filed February 20, 2019, the Court solicited public comment regarding the adoption of Tennessee Supreme Court Rule 46A, which would govern the electronic service (e-service) of papers that are electronically filed (e-filed) pursuant to local rules of court. The Court received favorable comments from the Knoxville Bar Association, the Shelby County Crimi-

nal and Civil Court Clerks, and several individual members of the Tennessee bar. The Court appreciates these responses and has incorporated several of the suggested revisions.

“After due consideration, the Court hereby adopts Rule 46A of the Rules of the Tennessee Supreme Court in the form set out in the Appendix to this Order. The Rule shall be effective on the filing date of this Order.”

Rule 47. Provision of Legal Services Following Determination of Major Disaster.

(a) **Determination of existence of major disaster.** Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) **Temporary practice in this jurisdiction following major disaster.**

Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

(c) **Temporary practice in this jurisdiction following major disaster in another jurisdiction.** Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) **Duration of authority for temporary practice.** The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the emergency conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end 60 days after this Court declares that the emergency conditions caused by the major disaster in the affected jurisdiction have ended.

(e) **Court appearances.** The authority granted by this Rule does not include appearances in court except:

(1) pursuant to that court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any pro hac vice admission fees shall be waived.

(f) **Disciplinary authority and registration requirement.** Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Tenn. Sup. Ct. R. 8, RPC 8.5. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) **Notification to clients.** Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction. [Added by order filed October 23, 2009, effective January 1, 2010.]

Commentary. [1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers

on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Tenn. Sup. Ct. R. 8, RPC 5.5(c).

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission rules of the particular court.

This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Tenn. Sup. Ct. R. 8, RPC 1.16.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

Rule 48. Assuming Jurisdiction Over Undecided Cases.

(a) A party to a pending, but undecided, appeal may request the Court to assume jurisdiction over the case meeting the requirements of Tenn. Code Ann. § 16-3-201(d)(1)-(2) by filing a motion that complies with the following requirements:

(1) The motion shall contain: (i) a statement of the question or questions presented for review, (ii) a statement of the relevant facts, (iii) a statement of the reason or reasons for assuming jurisdiction, including an explanation of the unusual public importance of the case and the need for an expedited decision, and (iv) a statement of the relief sought;

(2) The motion shall be accompanied by copies of the trial court's order or opinion, portions of the record, or affidavits and other relevant documents necessary for the disposition of the motion;

(3) Unless the moving party has already filed a bond for costs or is otherwise exempt by statute or rule from the obligation to file a bond in accordance with Tenn. R. App. P. 6, the motion shall be accompanied by a bond for costs with sufficient surety in the amount of \$1,000. If the appellate court clerk determines that this bond, or the bond filed in accordance with Tenn. R. App. P. 6, is insufficient, the Court may require an additional bond in an amount the Court deems sufficient to cover the costs of the appeal;

(4) The original and six (6) paper copies of the motion and supporting papers shall be filed with the clerk of the appellate court. In addition, the moving party shall provide the clerk with an electronic copy of the motion and all supporting papers in PDF format either by providing the clerk with a CD-ROM containing the motion and supporting papers or by emailing the motion and supporting papers to the clerk at an email address provided by the clerk; and

(5) The motion shall contain a certificate stating that the motion and supporting papers have been served on all other parties to the appeal in accordance with Tenn. R. App. P. 20.

(b) Unless otherwise ordered, any party who is served with a motion to assume jurisdiction may file the original and six (6) paper copies of a response to the motion within ten (10) days after the filing of the motion. The response may be accompanied by portions of the record, affidavits, or other relevant documents and shall be served on all other parties. Parties filing a response to a motion to assume jurisdiction shall also provide the clerk with an electronic copy of the response and all supporting papers in PDF format either by

providing the clerk with a CD-ROM containing the response and supporting papers or by emailing the response and supporting papers to the clerk at an email address provided by the clerk.

(c) The filing of a motion to assume jurisdiction does not stay the proceedings in the intermediate appellate court unless the Court orders otherwise.

(d) When the Court, either on its own motion in accordance with Tenn. Code Ann. § 16-3-201(d)(3) or on the motion of a party, grants a motion to assume jurisdiction over a pending appeal, the Court shall enter an order including a schedule for the preparation and filing of the record on appeal if the record has not already been filed and a briefing schedule. The Court may, in its discretion, either dispense with or expedite oral argument and may take any other necessary or appropriate actions. [Added by order entered June 12, 2009.]

Rule 49. Continuity of Operation Plan for the Tennessee Appellate Courts.

Section 1. In the event of a disaster that incapacitates the operation of the appellate courts in Nashville, Knoxville, or Jackson, the Chief Justice, or in the event the Chief Justice is unavailable, the next most senior Justice or intermediate appellate court judge available, shall have the authority to enter an order activating and promulgating a disaster plan. Among other things, such an order may:

(a) Grant up to a thirty-day extension of mandatory deadlines that would otherwise apply to documents required to be filed in the Supreme Court, Court of Appeals, or Court of Criminal Appeals. If deemed necessary, additional extensions of time may be granted upon a majority vote of the justices of the Supreme Court; and

(b) Designate alternate filing methods available to parties who choose to submit documents to the appellate courts during the pendency of the disaster plan. Alternate filing methods may include: (1) filing at a Designated Alternate Facility established by appellate court officials; (2) filing via the mail at an alternate unaffected Supreme Court building located in a different Grand Division of the State; and/or (3) filing via e-mail if the computer systems are operational.

Section 2. In the event of a disaster that incapacitates the operation of the courts in a particular county or counties, the Chief Justice, or in the event the Chief Justice is unavailable, the next most senior Justice or intermediate appellate court judge available, shall have the authority to enter an order activating and promulgating a disaster plan. Among other things, such an order may:

(a) Grant up to a thirty-day extension of mandatory deadlines that would otherwise apply to documents required to be filed under the Tennessee Rules of Civil, Criminal or Juvenile Procedure or the Rules of any court. If deemed necessary, additional extensions of time may be granted upon a majority vote of the justices of the Supreme Court; and

(b) Designate alternate filing methods available to parties who choose to submit documents to the courts during the pendency of the disaster plan.

Alternate filing methods may include: (1) filing at a Designated Alternate Facility established by court officials; (2) filing via the mail at an alternate Court building; and/or (3) filing via e-mail if the computer systems are operational.

Section 3. Any order entered pursuant to Section 1 or Section 2 shall be expeditiously disseminated to attorneys, litigants, the media, and the public via posting of the order on the website of the Administrative Office of the Courts at www.tncourts.gov, e-mailing the order to designated legal organizations, and providing a press release along with a copy of the order to media in Tennessee.

Section 4. Any order entered pursuant to Section 1 or Section 2 shall remain in effect for thirty days, unless the effective date is shortened or extended by a majority vote of the justices of the Supreme Court. [Added by order filed January 18, 2007; and amended by order filed July 1, 2008.]

Rule 50. Tennessee Access to Justice Commission.

Section 1. Establishment of the Tennessee Access to Justice Commission.

1.01. The Supreme Court of Tennessee hereby establishes the Access to Justice Commission (hereinafter referred to as the "Commission"). [Added by order entered April 3, 2009, effective April 3, 2009.]

1.02. The Commission shall consist of ten members who shall reflect, to the extent feasible, the diversity of the ethnic, gender, and geographic communities of Tennessee. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.03. The Supreme Court shall designate one member to serve as Chair of the Commission. Commission members shall elect a Vice-Chair to serve a one-year term and who is eligible to serve a total of three years. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.04. The initial term for each member shall be designated at the time of appointment. The Chair shall serve an initial term of three years. Three members shall be appointed for an initial term of three years; three members shall be appointed for an initial term of two years; and three members shall be appointed for an initial term of one year. Subsequent terms of all members shall be three years. No member may serve more than two successive three-year terms or more than a total of eight years consecutively. Vacancies shall be filled by appointment of the Supreme Court. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.05. The Commission shall meet at least quarterly and at other times at the call of the Chair. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.06. Five members of the Commission shall constitute a quorum. After a quorum is established, the Commission may act upon a majority vote of those present. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.07. Members shall receive no compensation for their services but may be reimbursed for their travel and other necessary expenses in accordance with regulations adopted by the Judicial Branch. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.08. A member of the Supreme Court will serve as liaison to the Commission. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.09. The Administrative Office of the Courts shall staff the Commission. [Added by order entered April 3, 2009, effective April 3, 2009.]

1.10. The Supreme Court shall review the Commission every five years to determine if the Commission continues to serve the purposes for which it was created. [Added by order entered April 3, 2009, effective April 3, 2009.]

Section 2. Duties and Authority.

2.01. The Commission shall develop a strategic plan for improving access to justice in Tennessee that shall include education of the public concerning the need for legal representation to meet the ideal of equal justice under law, identification of the priorities to meet the need of improved access to justice, and recommendations to the Supreme Court of projects and programs the Commission determines to be necessary and appropriate for enhancing access to justice in Tennessee. The Commission shall submit a strategic plan to the Court within twelve months of the filing of this Order and shall update the strategic plan every two years thereafter. [Added by order entered April 3, 2009, effective April 3, 2009.]

2.02 The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate. [Added by order entered April 3, 2009, effective April 3, 2009.]

2.03. The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission. [Added by order entered April 3, 2009, effective April 3, 2009.]

2.04. The Commission shall:

- (a) Review the report filed with the Court by the Task Force to Study Self Represented Litigants and consider the recommendations contained therein.
- (b) Encourage state and local bar associations, access to justice organizations, pro bono programs, judges, and court clerks across the state to promote

and to recognize pro bono service by lawyers across the state;

(c) Encourage state and local bar associations, access to justice organizations, pro bono programs, judges, and court clerks across the state to encourage full and limited scope legal representation at reduced fees;

(d) Encourage the Alternative Dispute Resolution Commission and other groups to provide pro bono and reduced-rate mediation services to self-represented litigants and to litigants who, although represented, have modest means or who are pro bono clients;

(e) Address existing and proposed laws, rules, procedures, and policies that are barriers to access to justice for low income Tennesseans and to consider the role of community education and increased availability of technology in reducing these barriers.

(f) Develop and recommend initiatives and systemic changes to reduce barriers to access to justice and to meet the legal needs of:

(1) Persons who do not qualify for existing assistance programs by reason of their incomes but whose access to civil justice is limited by the actual or perceived cost of legal services;

(2) Persons with disabilities who do not qualify for existing assistance programs by reason of their incomes;

(3) Persons in language minorities; and

(4) Persons whose legal needs may not be met due to restrictions on representation by legal aid programs funded by the Legal Services Corporation.

(g) Promote increased understanding of the importance of access to justice and of the barriers faced by many Tennesseans in gaining effective access to the civil justice system; and

(h) Study and recommend strategies to increase resources and funding for access to justice in civil matters in Tennessee. [Added by order entered April 3, 2009, effective April 3, 2009.]

2.05. The Commission has no independent authority to adopt or implement recommendations. [Added by order entered April 3, 2009, effective April 3, 2009.]

Compiler's Notes. The Supreme Court, in its order filed April 1, 2008, as amended by the Supreme Court order filed June 30, 2008, provided that: the Court is considering the adoption of a new Rule of the Supreme Court governing the appointment of guardians ad litem for minor children in divorce and post-divorce proceedings. The proposed rule was set out for comments with a deadline of June 30, 2008. The rule was apparently not adopted.

The Supreme Court, in its order filed April 3, 2009, provided that: "Pursuant to Rule 50 of the Rules of the Supreme Court of Tennessee, the Court hereby establishes the Access to Justice Commission ('the Commission'). The duties of the Commission shall include:

"The development of a strategic plan for improving access to justice in Tennessee that shall include education of the public concerning

the need for legal representation to meet the ideal of equal justice under law, identification of the priorities to meet the need of improved access to justice, and recommendations to the Supreme Court of projects and programs the Commission determines to be necessary and appropriate for enhancing access to justice in Tennessee. The strategic plan shall be submitted to the Court within twelve months of the filing of this Order.

"The Commission shall:

"(a) Review the report filed with the Court by the Task Force to Study Self Represented Litigants and consider the recommendations contained therein.

"(b) Encourage state and local bar associations, access to justice organizations, pro bono programs, judges, and court clerks across the

state to promote and to recognize pro bono service by lawyers across the state;

“(c) Encourage state and local bar associations, access to justice organizations, pro bono programs, judges, and court clerks across the state to encourage full and limited scope legal representation at reduced fees;

“(d) Encourage the Alternative Dispute Resolution Commission and other groups to provide pro bono and reduced-rate mediation services to self-represented litigants and to litigants who, although represented, have modest means or who are pro bono clients;

“(e) Address existing and proposed laws, rules, procedures and policies that are barriers to access to justice for low income Tennesseans and to consider the role of community education and increased availability of technology in reducing these barriers.

“(f) Develop and recommend initiatives and

systemic changes to reduce barriers to access to justice and to meet the legal needs of (1) Persons who do not qualify for existing assistance programs by reason of their incomes but whose access to civil justice is limited by the actual or perceived cost of legal services; (2) Persons with disabilities who do not qualify for existing assistance programs by reason of their incomes; (3) Persons in language minorities; and (4) Persons whose legal needs may not be met due to restrictions on representation by legal aid programs funded by the Legal Services Corporation.

“(g) Promote increased understanding of the importance of access to justice and of the barriers faced by many Tennesseans in gaining effective access to the civil justice system; and

“(h) Study and recommend strategies to increase resources and funding for access to justice in civil matters in Tennessee.”

Rule 50A. Special Initiatives to Improve Access to Justice.

Section 1. Legal Services by Pro Bono Emeritus Attorneys.

1.01. Purpose. Attorneys have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting the unmet legal needs of those persons who are unable to afford counsel, this Court establishes the pro bono emeritus attorneys participation program. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.02. Definitions.

(a) The “active practice of law” for purposes of this rule means engagement in the practice of law, including, but not limited to: private practice, in-house counsel, public employment, or employment by a not-for-profit organization.

(b) A “pro bono emeritus attorney” is any person, not currently actively engaged in the practice of law, who was or is admitted to practice before the Tennessee Supreme Court or the highest court of any other state or territory of the United States or the District of Columbia, and

(1) Has been engaged in the active practice of law for a minimum of five of the last ten years immediately preceding application to participate in the pro bono emeritus attorneys’ program, or who has taken retired or inactive status but was engaged in the active practice of law for at least twenty-five years preceding application to participate in the pro bono emeritus attorneys’ program;

(2) Has never been disbarred and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the last ten years and is not on disability inactive status in any jurisdiction;

(3) If not a member of the Tennessee bar, has graduated from a law school accredited by the American Bar Association;

(4) Agrees to abide by the Tennessee Rules of Professional Conduct and to submit to the Tennessee Supreme Court for disciplinary purposes;

(5) Neither asks for nor receives compensation of any kind for the legal services to be rendered under this section; and

(6) Is certified under section 1.05.

(c) An “approved legal assistance organization” for the purposes of this section is a not-for-profit legal assistance organization which is approved by the Tennessee Supreme Court. An organization which receives funding from the Legal Services Corp. is presumptively approved under this section. Any other organization seeking approval under this section must file a petition with the clerk of the Tennessee Supreme Court certifying that it is a not-for-profit organization and stating with specificity:

(1) The structure of the organization and whether it accepts funds from clients;

(2) The major sources of funds used by the organization;

(3) The criteria used to determine potential clients’ eligibility for legal services performed by the organization;

(4) The types of legal and non-legal services performed by the organization;

(5) The names of all members of the Tennessee bar who are employed by the organization and who regularly perform legal work for clients;

(6) The existence and extent of malpractice insurance to cover claims made by clients against an emeritus attorney.

(d) A “supervising attorney” is an active member of the Tennessee bar who oversees the work of an emeritus attorney engaged in activities permitted by this section. The supervising attorney must:

(1) Be employed by or be a participating volunteer for an approved legal assistance organization; and

(2) Assume responsibility for overseeing the work of the emeritus attorney to the same extent as any supervising attorney in a legal assistance program supervises any other volunteer attorney; [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.03. Scope of Representation. A pro bono emeritus attorney, in association with an approved legal assistance organization, may perform any legal work on behalf of a client that could be performed by any licensed attorney in the state of Tennessee, except that the ability of a pro bono emeritus attorney to make court appearances is subject to court approval. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.04. Supervision and Limitations.

(a) A pro bono emeritus attorney must perform all activities under the auspices of a supervising attorney. It is the responsibility of the supervising attorney to ensure that the pro bono emeritus attorney receives the same supervision as any other volunteer attorney or subordinate attorney, including compliance with the requirements of Tenn. R. Sup. Ct. 8, RPC 5.1.

(b) Pro bono emeritus attorneys permitted to perform services under this section are not, and shall not represent themselves to be, active members of the Tennessee bar licensed to practice in the state.

(c) The prohibition against compensation for the pro bono emeritus attorney contained in section 1.02(b)(5) shall not prevent the approved legal

assistance organization from reimbursing the pro bono emeritus attorney for actual expenses incurred while rendering services under this section nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by a pro bono emeritus attorney. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.05. Certification. An attorney seeking permission to act as a pro bono emeritus attorney shall file an application with the clerk of the Tennessee Supreme Court, which shall consist of:

(a) A certificate by an approved legal assistance organization stating that the pro bono emeritus attorney is currently associated with that legal assistance organization, meets the requirements of section 1.02(b), and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney as required under this section; and

(b) A sworn statement by the pro bono emeritus attorney that he or she:

(1) Has read and is familiar with the Rules of Professional Conduct and the Rules of the Supreme Court of Tennessee relating to the conduct of lawyers, and will abide by the provisions of those Rules;

(2) Submits to the jurisdiction of the Tennessee Supreme Court for disciplinary purposes, as defined by the Rules of Professional Conduct; and

(3) Will neither ask for nor receive compensation for any kind of legal services authorized by this Rule.

Permission for a pro bono emeritus attorney to perform services under this section shall become effective upon the Tennessee Supreme Court's written approval of the application. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.06. Withdrawal of Certification.

(a) Permission to perform services under this section shall cease immediately upon the filing of a notice with the clerk of the Tennessee Supreme Court:

(1) By the approved legal assistance organization stating that:

(A) The pro bono emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or

(B) That certification of such attorney has been withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state cause for such withdrawal. A copy of the notice shall be filed with the clerk of the Tennessee Supreme Court and shall be mailed by the legal assistance organization to the pro bono emeritus attorney;

(2) By the Board of Professional Responsibility, stating that the pro bono emeritus attorney has been determined, after investigation, to have committed a violation of the Tennessee Rules of Professional Conduct meriting the imposition of discipline; or

(3) By the Tennessee Supreme Court, in its discretion, at any time, stating that permission to perform services under this section has been revoked. A

copy of such notice shall be mailed by the clerk of the Tennessee Supreme Court to the pro bono emeritus attorney and to the approved legal assistance organization to which he or she had been certified by the Tennessee Supreme Court.

(b) If a pro bono emeritus attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action in any court or tribunal in which the pro bono emeritus attorney was participating as counsel. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.07. Discipline and Fees. A pro bono emeritus attorney performing services under this section shall abide by the Tennessee Rules of Professional Conduct and is subject to discipline, including withdrawal of certification under this rule, for any failure to comply with those Rules. A pro bono emeritus attorney is exempt from the registration fee required of all practicing attorneys. A pro bono emeritus attorney performing services solely under the authority of this section shall not be deemed to be a person licensed as an attorney by this Court for purposes of Tenn. Code Ann. § 67-4-1702(a)(5), [Adopted by order filed September 2, 2010, effective January 1, 2011.]

1.08. Mandatory Continuing Legal Education. Pro bono emeritus attorneys certified under section 1.05 must comply with Tennessee's continuing legal education requirements. Tenn. Sup. Ct. R. 21. [Adopted by order filed September 2, 2010, effective January 1, 2011.]

Rule 51. Procedures in Workers' Compensation Appeals.

Section 1. Referral to Special Workers' Compensation Appeals Panel. Pursuant to Tenn. Code Ann. § 50-6-225(e)(3) and (4) (applicable to injuries occurring prior to July 1, 2014) and Tenn. Code Ann. § 50-6-225(a)(3) and (4) (applicable to injuries occurring on and after July 1, 2014), and subject to Section 2 of this rule, all workers' compensation appeals to the Supreme Court are hereby referred to the Special Workers' Compensation Appeals Panel to be heard and determined by the Panel in accordance with the Tennessee Rules of Appellate Procedure, as if the appeal were being heard by the entire Supreme Court. [Added by order entered October 8, 2009, effective October 8, 2009; amended by order entered July 17, 2015, effective July 17, 2015.]

Compiler's Notes. The reference to Tenn. Code Ann. 50-6-225(e)(3) and (4) continues to apply to injuries occurring prior to July 1, 2014.

Tenn. Code Ann. 50-6-225 was rewritten effective July 1, 2014, and the same provision may now be found in 50-6-225(a)(3) and (4).

Section 2. Supreme Court's Discretionary Review. Following the filing of the briefs in a workers' compensation appeal, the Supreme Court, on its own initiative, may enter an order directing that the appeal not be referred to the Appeals Panel in accordance with Section 1. In such cases, the appeal shall be placed on the Supreme Court's docket to be heard and determined by the entire Supreme Court in accordance with the Tennessee Rules of Appellate

Procedure. The exercise of the Court’s review under this section is discretionary and generally will involve cases which present an unsettled or otherwise important issue of law. [Added by order entered October 8, 2009, effective October 8, 2009.]

Section 3. Supreme Court’s Review Following Appeals Panel’s Decision. Tenn. Code Ann. § 50-6-225(e)(5)(A) (applicable to injuries occurring prior to July 1, 2014) and Tenn. Code Ann. § 50-6-225(a)(5) (applicable to injuries occurring on and after July 1, 2014) provide for the Supreme Court’s review of any appeal referred to and determined by the Panel in accordance with Section 1 of this rule. In addition to the procedures set out in the respective statutes, the following procedures shall apply in such cases.

(a) If the Court grants review of the Panel’s decision pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(i) or (ii) (applicable to injuries occurring prior to July 1, 2014) or Tenn. Code Ann. § 50-6-225(a)(5)(A)(i) or (ii) (applicable to injuries occurring on and after July 1, 2014):

- (1) the Court may, in its discretion, order the filing of supplemental briefs;
- (2) the appellate court clerk, unless otherwise ordered by the Court, shall place the case on the Court’s next docket for oral argument in the division in which the case arises, subject to a motion to expedite the case pursuant to Tenn. Code Ann. § 50-6-225(f)(2) (applicable to injuries occurring prior to July 1, 2014) or Tenn. Code Ann. § 50-6-225(b)(2) (applicable to injuries occurring on and after July 1, 2014).

(b) If the Court denies a motion for review filed pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii) (applicable to injuries occurring prior to July 1, 2014) or Tenn. Code Ann. § 50-6-225(a)(5)(A)(ii) (applicable to injuries occurring on and after July 1, 2014), the Court’s denial of the motion shall be final; no petition for rehearing shall be available pursuant to Tenn. R. App. P. 39. [Added by order entered October 8, 2009, effective October 8, 2009; amended by order entered July 17, 2015, effective July 17, 2015.]

Compiler’s Notes. The references in this rule to Tenn. Code Ann. 50-6-225(e)(5)(A), (e)(5)(A)(i), (ii); and (f)(2) continue to apply as to injuries occurring prior to July 1, 2014. Section 50-6-225 was rewritten effective July 1, 2014, and the same provisions may now be found in Tenn. Code Ann. 50-6-225(a)(5)(A), (a)(5)(A)(i), (ii); and (b)(2), respectively.

Section 4. Interlocutory & Extraordinary Appeals By Permission.

In workers’ compensation cases involving an injury that occurred prior to July 1, 2014, applications for permission to appeal pursuant to Tenn. R. App. P. 9 or 10 shall be ruled upon in the first instance by the Supreme Court. Upon granting such an application, the Court, in its discretion, may refer the appeal to the Appeals Panel for determination on the merits. Following the Panel’s decision in such an appeal, any party to the appeal may file a motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii) (applicable to injuries occurring prior to July 1, 2014). [Added by order entered October 8, 2009, effective October 8, 2009; amended by order entered July 17, 2015, effective July 17, 2015.]

Compiler’s Notes. The reference in this rule to Tenn. Code Ann. 50-6-225(e)(5)(A)(ii) continues to apply as to injuries occurring prior to July 1, 2014. Section 50-6-225 was rewritten

effective July 1, 2014, and the same provisions may now be found in Tenn. Code Ann. 50-6-225(a)(5)(A)(ii).

Rule 52. Forms Approved for Use in Tennessee Courts.

Section 1.01. Purpose. The Tennessee judicial system should be accessible to all litigants including those unable to pay for the assistance of counsel. As one means of increasing access to the Tennessee judicial system, the Court is providing greater resources for self-represented litigants, lawyers, and court personnel by approving forms that shall be universally acceptable as legally sufficient in all Tennessee courts. It is not the intent of this rule to mandate the use of court-approved forms; rather, the intent is to ensure that court-approved forms are accepted for filing by all Tennessee courts when litigants or attorneys choose to use them.

Section 1.02. Definitions.

(a) “Court-approved forms” means any and all forms adopted by the Tennessee Supreme Court pursuant to this rule.

(b) “Universally acceptable as legally sufficient” means that Tennessee courts must accept for filing any court-approved forms submitted by a litigant or litigant’s attorney, subject to the limitation stated in section 1.04.

Section 1.03. Use of Court-Approved Forms. Any form approved by the Supreme Court pursuant to this rule shall be deemed universally acceptable as legally sufficient for filing in the Tennessee courts. The foregoing sentence, however, does not limit the court’s authority to adjudicate the legal efficacy of the contents of the filing under the applicable rules of procedure and any other pertinent law.

Litigants and attorneys are encouraged to use court-approved forms; however, the use of court-approved forms is not mandatory.

Section 1.04. Alteration of Court-Approved Forms. If a court-approved form is altered beyond mere completion of the form, the altered form shall no longer be considered a court-approved form or universally acceptable as legally sufficient as those terms are used in this rule. If a court-approved form is altered beyond mere completion of the form, the words “Approved by the Tennessee Supreme Court” shall be removed from the altered form.

Section 1.05. Updating Court-Approved Forms. The Administrative Office of the Courts shall be responsible for maintaining and updating court-approved forms. Additionally, court-approved forms shall be posted on the website of the Tennessee State Courts as “Tenn. Sup. Ct. R. 52 Court-Approved Forms”. [Adopted by order entered July 27, 2011, effective July 27, 2011.]

Compiler’s Notes. In its order filed August 18, 2015, the Supreme Court provided: “On August 7, 2015, the Access to Justice Commission (“Commission”) filed a petition seeking approval of plain language forms and instructions for use in uncontested divorces between parties with minor children and attached the proposed forms and instructions as Exhibit A to its petition. According to the petition, the forms were developed by the Commission’s Self-Represented Litigants Advisory Committee (“Com-

mittee”), with input from “judges, court clerks, state and local bar associations, individual attorneys, legal aid organizations, and other stakeholders” and advance the Commission’s goal of developing “additional resources for low-income Tennesseans who must navigate the court system without the benefit of counsel.” The Commission asks this Court to approve the forms and instructions as universally acceptable and legally sufficient, pursuant to Tennessee Supreme Court Rule 52.

The Court hereby publishes for public comment the Commission's petition, including forms and instructions set out in Exhibit A. Additionally, the Court solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Monday, October 18, 2015. Written comments may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to: James H. Hivner, Clerk, Re: Tenn. Sup. Ct. R. 52, Tennessee Appellate Courts, 100 Supreme Court Building, 401 7th Avenue North, Nashville, TN 37219-1407 and should reference the docket number set out above [No. ADMIN2015-01485]. For the text of the proposed forms, please see Appendix A to this order on the court's website at: <http://www.tncourts.gov/rules/proposed/>.

In its order filed December 22, 2016, the Supreme Court provided: "On October 31, 2016,

this Court adopted and approved as universally acceptable and legally sufficient for use in all Tennessee courts, pursuant to Tennessee Supreme Court Rule 52, plain language forms for uncontested divorces with minor children. These forms were to become effective January 1, 2017.

"Since that time, the Access to Justice Commission has recommended that the Court revise the forms prior to their effective date to clarify that spouses with orders of protection may utilize the forms. The Court agrees with the Commission's recommendation and hereby adopts and approves as universally acceptable and legally sufficient pursuant to Tennessee Supreme Court Rule 52 the revised forms, attached as an Appendix to this Order. These revised forms shall be effective January 1, 2017, and shall supersede and replace the forms published as an Appendix to the October 31, 2016 order of this Court."

Rule 53. Collaborative Family Law

In its order filed April 1, 2019, the Supreme Court provided that: "On June 13, 2017, the Tennessee Bar Association filed a petition seeking to amend the Rules of the Tennessee Supreme Court to add a new rule which would address the practice of "Collaborative Family Law." By Order filed August 22, 2017, the Court solicited written public comments to the proposed new rule. The Court received written public comments from the Board of Professional Responsibility, the Nashville Bar Association, the Knoxville Bar Association, the Middle Tennessee Collaborative Alliance, individual attorneys, and individual non-attorneys. By Order filed January 9, 2018, the Court directed the Tennessee Bar Association to respond to the written public comments, and it did so on February 9, 2018. By Order filed June 22, 2018, the Court directed the Alternative Dispute Resolution Commission to formally

comment on the proposed new rule, and it responded on July 24, 2018. By Order filed September 11, 2018, the Court set this matter for hearing on October 4, 2018 and directed the Tennessee Bar Association to provide a presenter to address certain issues. The hearing was held on that date and the Tennessee Bar Association's representative addressed those issues and additional questions from the Court. On October 22, 2018, the Tennessee Bar Association provided additional information requested by the Court during the hearing. The Court thanks the Tennessee Bar Association and all of those providing comments.

"After due consideration, the Court hereby amends the Rules of the Supreme Court of Tennessee to add new Rule 53 addressing Collaborative Family Law in the form set out in the Appendix to this Order. The adoption of this new Rule shall be effective immediately upon the filing of this Order."

Section 1. Introduction. Collaborative law is a voluntary, contractually based alternative dispute resolution process for parties who seek to negotiate a resolution of their matter. The distinctive feature of collaborative law, as compared to other forms of alternative dispute resolution such as mediation, is that parties are represented during negotiations by collaborative lawyers who they retain for the limited purpose of acting as advocates and counselors during the negotiation process and obtaining court approval. The basic ground rules for a collaborative law matter are set forth in a collaborative law participation agreement in which parties designate collaborative lawyers and other professionals and agree not to seek judicial resolution of a dispute during the collaborative law process. The goal of the collaborative family law process

is to achieve an agreement on all issues considered in the collaborative family law process, so that agreements signed by the parties can be submitted to a court for approval to resolve all pending or disputed matters. [Adopted effective April 1, 2019.]

Section 2. Definitions.

(a) “Collaborative family law process” is a procedure intended to resolve a collaborative matter with intervention by a court limited to required review of proposed marital dissolution agreements, permanent parenting plans, or other settlement documents, in which persons:

- (1) sign a collaborative law participation agreement; and
- (2) are represented by collaborative lawyers.

(b) “Collaborative family law matter” is a dispute, transaction, claim, problem, or issue for resolution that arises under or is related to Tennessee Code Annotated Titles 36 and 37 and that is described in a collaborative family law participation agreement including but not limited to (A) marriage, divorce, dissolution, annulment, and property distribution; (B) parenting time; (C) alimony, maintenance, and child support; (D) adoption; (E) parentage; and (F) premarital, marital, and post-marital agreements.

(c) “Collaborative family law participation agreement” is an agreement by persons to participate in a collaborative family law process.

(d) “Collaborative family law communication” is a statement, whether oral or in a record, or verbal or nonverbal, that:

- (1) is made to conduct, participate in, continue, or reconvene a collaborative law process; and
- (2) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(e) “Collaborative lawyer” is a lawyer who represents a party in a collaborative family law process.

(f) “Law firm” is:

- (1) Lawyers who practice law together in a partnership, professional corporation, limited liability company, an association of professionals, or other business entities; and
- (2) Lawyers employed in a non-profit legal services organization or in the legal department of a corporation or other organization or a government or governmental subdivision, agency, or instrumentality.

(g) “Nonparty participant” is a person, other than the collaborative family lawyer and a party, who participates in a collaborative law process.

(h) “Party” is a person, other than a collaborative professional, who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative family law matter.

(i) “Proceeding” is an actual or anticipated judicial, administrative, arbitral, or other adjudicative process before a court, including related pre-hearing and post-hearing motions, conferences, and discovery.

(j) “Prospective party” is a person who discusses with a collaborative lawyer the possibility of signing a collaborative family law participation agreement.

(k) “Related to a collaborative family law matter” is a matter involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative family law matter.

(l) “Court” includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit, Chancery, Law and Equity and Probate courts, General Sessions courts, Juvenile courts, and Municipal courts.

(m) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [Adopted effective April 1, 2019.]

Section 3. Applicability.

This Rule applies to a collaborative law participation agreement that meets the requirements of Section 4 of this Rule signed on or after the effective date of the Rule [April 1, 2019]. [Adopted effective April 1, 2019.]

Section 4. Requirements for Collaborative Family Law Participation Agreement.

(a) A collaborative family law participation agreement must:

- (1) be memorialized in a record;
- (2) be signed by the parties;
- (3) state the parties’ intent to resolve a collaborative family law matter through a collaborative law process under this Rule;
- (4) describe the nature and scope of the collaborative family law matter;
- (5) identify the collaborative family lawyer who represents each party in the process; and
- (6) contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative family law process.

(b) A collaborative family law participation agreement must include provisions for:

- (1) the parties to forgo seeking intervention of the court in the collaborative family law matter while the parties are using the collaborative family law process; and
- (2) jointly engaging any professionals, experts, or advisors serving in a neutral capacity, and
- (3) mandatory withdrawal from the case by both collaborative lawyers if one or both of the parties chooses to terminate the collaborative process and in fact moves the matter into litigation. This requirement of mandatory withdrawal may not be waived by the parties or their respective collaborative lawyers.

(c) Parties may agree to include in a collaborative family law participation agreement additional provisions not inconsistent with this Section, including but not limited to agreements for payment of professional fees. [Adopted effective April 1, 2019.]

Section 5. Beginning and Concluding Collaborative Family Law Process.

(a) A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

(b) Participation in the collaborative family law process is voluntary and a court may not order a party to participate in a collaborative family law process over the party’s objection.

(c) A collaborative family law process concludes by:

- (1) resolution of a collaborative family law matter as evidenced by a signed record, and when necessary approved by a court;

(2) resolution of a part of a collaborative family law matter, evidenced by a signed record, and when necessary approved by a court, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process under Subsection (d).

(d) A collaborative family law process terminates:

(1) when a party gives written notice to other parties in a record that the process is ended;

(2) when a party:

a. begins a proceeding related to a collaborative family law matter without the agreement of all parties; or

b. in a pending proceeding related to the matter:

i. without the agreement of all the parties, initiates a pleading, motion, or request for a conference with the court;

ii. initiates an order to show cause or requests that the proceeding be put on the court's active calendar; or

iii. takes similar action requiring notice to be sent to the parties; or

c. except as otherwise provided by Subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt written notice in a record to all other parties of the collaborative lawyer's discharge or withdrawal.

(f) A party may terminate a collaborative family law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative family law process continues if, not later than the 30th day after the date the notice of the collaborative lawyer's discharge or withdrawal required by Subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

a. the parties consent to continue the process by reaffirming the collaborative family law participation agreement;

b. the agreement is amended to identify the successor collaborative lawyer; and

c. the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative family law participation agreement may provide additional methods of concluding a collaborative family law process including, but not limited to, mediation. [Adopted effective April 1, 2019.]

Section 6. Proceedings Pending Before Court; Status Report.

(a) Persons in a proceeding pending before a court may sign a collaborative family law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the court a notice of the agreement after it is signed. Subject to Subsection (c) and Sections 7 and 8, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the court notice in a record when a collaborative family law process concludes. The stay of the proceedings under

Subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) A court in which a proceeding is stayed under Subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative family law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative family law process or collaborative law matter.

(d) A court may not consider a communication made in violation of Subsection (c).

(e) A court shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of a collaborative family law process is filed based on delay or failure to prosecute. [Adopted effective April 1, 2019.]

Section 7. Emergency Order.

During a collaborative family law process, nothing herein or in a collaborative family law participation agreement will prevent a court from issuing an emergency order to protect the health, safety, welfare, or interest of a party, or members of a family or household. [Adopted effective April 1, 2019.]

Section 8. Effect of Written Settlement Agreement.

A settlement agreement under this Rule is enforceable in the same manner as a written settlement agreement under Tennessee law. [Adopted effective April 1, 2019.]

Section 9. Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm; Exception.

(a) Except as provided by Subsection (c), a collaborative lawyer is disqualified from appearing before a court to represent a party in a proceeding related to the collaborative family law matter regardless of whether the collaborative lawyer is representing the party for a fee.

(b) Except as provided in Subsection (c) and Section 10, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a court to represent a party in a proceeding related to the collaborative family law matter if the collaborative lawyer is disqualified from doing so under Subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to request a court to approve an agreement resulting from the collaborative family law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a family if a successor lawyer is not immediately available to represent that party.

(d) The exception prescribed by Subsection (c)(2) does not apply after the party is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that party or family. [Adopted effective April 1, 2019.]

Section 10. Exception from Disqualification for Representation of Low-Income Parties.

After a collaborative family law proceeding concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 9, Subsection (a), is associated may represent a party without a fee in the collaborative family law matter or a matter related to the collaborative family law matter if:

- (a) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;
- (b) the collaborative family law participation agreement authorizes that representation; and
- (c) the collaborative lawyer is isolated from any participation in the collaborative family law matter through procedures with the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation as set out in Tenn. Sup. Ct. Rule 8, RPC 1.10. [Adopted effective April 1, 2019.]

Section 11. Governmental Entity as Party.

(a) In this Section “governmental entity” is the State of Tennessee, a political subdivision of the State, or an agency of the State.

(b) The disqualification prescribed in Section 9, Subsection (a), applies to a collaborative lawyer representing a party that is a governmental entity.

(c) After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a governmental entity in the collaborative family law matter or a matter related to the collaborative family law matter if:

- (1) the collaborative family law participation agreement authorizes that representation; and
- (2) the collaborative lawyer is isolated from any participation in the collaborative family law matter or a matter related to the collaborative family law matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation as set out in Tenn. Sup. Ct. Rule 8, RPC 1.10. [Adopted effective April 1, 2019.]

Section 12. Disclosure of Information.

(a) Except as otherwise provided by law, during the collaborative family law process a party shall make timely, full, candid, and informal disclosure of information related to the collaborative family law matter without formal discovery. A party shall also update promptly any previously disclosed information that has materially changed and/or which becomes available.

(b) The parties may define the scope of the disclosure under Subsection (a) during the collaborative family law process.

(c) The parties shall each sign, under oath, a joint sworn complete statement of assets and liabilities, including contingent assets and possessory interests, verifying that they have fully disclosed all marital and separate property as well as liabilities, including but not limited to contingent assets and contingent liabilities. A jointly retained financial neutral may prepare the sworn statement. The parties shall make available documents to verify their sworn statements. [Adopted effective April 1, 2019.]

Section 13. Standards of Professional Responsibility and Mandatory Reporting not Affected.

- This Rule does not affect:
- (a) Except as provided in Sections 9 and 10, the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
 - (b) The obligation of any person under other law to report abuse or neglect, abandonment, or exploitation of a child or adult. [Adopted effective April 1, 2019.]

Section 14. Appropriateness of Collaborative Law Process.

- Before a prospective party signs a collaborative family law participation agreement, a prospective collaborative lawyer must:
- (a) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative family law process is appropriate for the prospective party's matter;
 - (b) provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative family law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, including litigation, mediation, arbitration, or expert evaluation; and
 - (c) advise the prospective party that:
 - (1) after signing a collaborative family law participation agreement, if a party initiates a proceeding or seeks court intervention in a pending proceeding related to the collaborative family law matter, the collaborative family law process terminates, other than to submit the agreement achieved in the collaborative family law process to the court for approval and entry of final order;
 - (2) participation in a collaborative family law process is voluntary and any party has the right to terminate unilaterally a collaborative family law process with or without cause; and
 - (3) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a court to represent a party in a proceeding related to the collaborative family law matter, except as authorized by Section 9, Subsection (a), Section 10, and Section 11, Subsection (c). [Adopted effective April 1, 2019.]

Section 15. Family Violence.

- (a) In this Section:
 - (1) "Dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.
 - (2) "Family violence" means an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.
 - (3) "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(4) “Member of a household” includes a person who previously lived in a household.

(b) Before a prospective party signs a collaborative family law participation agreement in a collaborative family law matter in which another prospective party is a member of the prospective party’s family or household or with whom the prospective party has or has had a dating relationship, a prospective collaborative lawyer must make reasonable inquiry regarding whether the prospective party has a history of family violence with the other prospective party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, the lawyer may not begin or continue a collaborative family law process unless:

- (1) the party or prospective party requests beginning or continuing a process; and
- (2) the collaborative lawyer determines with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence. [Adopted effective April 1, 2019.]

Section 16. Confidentiality of Collaborative Family Law Communication.

A collaborative family law communication is confidential to the extent agreed to by the parties in a signed agreement. Evidence of conduct or statements made in the course of a collaborative family law proceeding shall be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408. [Adopted effective April 1, 2019; and amended by order filed July 15, 2019, effective upon filing.]

Compiler’s Notes. In its order filed July 15, 2019, the Supreme Court provided that: “By Order filed April 1, 2019, the Court adopted new Rule 53 of the Rules of the Supreme Court of Tennessee addressing Collaborative Family Law. It has come to the Court’s attention that

there is a typographical error in section 16 of this Rule. After due consideration, the Court hereby adopts the amendment to section 16 of Tenn. Sup. Ct. R. 53, as set out in the attached Appendix. This amendment shall take effect immediately upon the filing of this Order.”

Section 17. Privilege Against Disclosure of Collaborative Family Law Communication.

(a) Except as provided by Section 18, a collaborative family law communication, whether made before or after the institution of a proceeding, is privileged and not subject to discovery and may not be admissible in evidence against a party or nonparty participating in a proceeding.

(b) Any record of a collaborative family law communication is privileged, and neither the parties nor the nonparty participants may be required to testify in a proceeding related to or arising out of the collaborative family law matter or be subject to a process requiring disclosure of privileged information related to the collaborative matter.

(c) An oral communication or written material used in or made a part of a collaborative family law process is admissible or discoverable if it is admissible or discoverable independent of the collaborative family law process.

(d) If this Section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of privilege may be presented to the court having jurisdiction of the proceeding to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure. The presentation of the issue of privilege under this Subsection does not constitute a termination of the collaborative family law process under Section 5, Subsection (d)(2) b.

(e) A party or nonparty participant may disclose privileged collaborative family law communications to a party's successor counsel, subject to the terms of confidentiality in the collaborative family law participation agreement. Collaborative family law communications disclosed under this Subsection remain privileged.

(f) A person who makes a disclosure or representation about a collaborative family law communication that prejudices the rights of a party or nonparty participant in a proceeding may not assert a privilege under this Section. The restriction provided by this Subsection applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation. [Adopted effective April 1, 2019.]

Section 18. Waiver and Preclusion of Privilege.

(a) a privilege under Section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant;

(b) a person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under Section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation. [Adopted effective April 1, 2019.]

Section 19. Limits of Privilege.

(a) The privilege prescribed in Section 17 does not apply to a collaborative family law communication that is:

(1) in a record resulting from the collaborative family law process, evidenced in a record signed by all parties to the agreement;

(2) subject to an express waiver of the privilege in a record or orally during a proceeding if the waiver is made by all parties and nonparty participants;

(3) available to the public under the Tennessee Open Records Act, Tenn. Code Ann. § 10-7-503 et seq.;

(4) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(5) a disclosure of a plan to commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(6) a disclosure in a report of:

a. suspected abuse or neglect of a child to an appropriate agency under Tenn. Code Ann. § 37-1-403 and Tenn. Code Ann. § 37-1-605 or in a proceeding regarding the abuse or neglect of a child, except that evidence may be excluded in the case of communications covered by the attorney client privilege; or

- b. abuse, neglect, or exploitation of an elderly or disabled person to an appropriate agency under Tenn. Code Ann. § 71-6-103; or
- (7) a disclosure sought or offered to prove or disprove:
- a claim or complaint of professional misconduct
 - an allegation that the settlement agreement was procured by fraud, duress, coercion, or other dishonest means or that terms of the settlement agreement are illegal;
 - the necessity and reasonableness of attorney's fees and related expenses incurred during a collaborative family law process; or
 - a claim against a third person who did not participate in the collaborative family law process, or if offered for proving bias, prejudice, undue delay, or obstruction.

(b) If a collaborative family law communication is subject to an exception under Subsection (a), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(c) The disclosure or admission of evidence excepted from the privilege under Subsection (a) does not make the evidence or any other collaborative family law communication discoverable or admissible for any other purpose. [Adopted effective April 1, 2019.]

Section 20. Authority of Court in Case of Noncompliance.

(a) Notwithstanding that an agreement fails to meet the requirements of Section 4(a) and/or (b) or that a lawyer has failed to comply with Sections 14 and 15, a court may find that the parties intended to enter into a collaborative family law participation agreement if the parties:

- signed a writing indicating an intent to enter into a collaborative family law participation agreement; and
- reasonably believed the parties were participating in a collaborative family law process.

(b) If a court makes the findings specified in Subsection (a) and determines that the interests of justice require the following action, the court may:

- enforce an agreement evidenced by a writing resulting from the process in which the parties participated;
- apply the disqualification provisions of Sections 9 and 10; and
- apply the collaborative family law privilege under Section 17. [Adopted effective April 1, 2019.]

Section 21. Other Alternative Dispute Resolution Permitted.

Nothing in this Rule shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternative dispute resolution not requiring court intervention, including mediation, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' collaborative lawyers for the collaborative family law proceeding may also serve as counsel for any such alternate dispute resolution pursued as part of the collaborative law agreement. [Adopted effective April 1, 2019.]

Section 22. Effective date.

This rule shall take effect immediately upon the filing of the Court's Order adopting this Rule [April 1, 2019]. [Adopted effective April 1, 2019.]

APPENDICES

Appendix A

Forms and Instructions for Divorces Without Children Court-Approved Pursuant to Tenn. Sup. Ct. R. 52

How to Get an Agreed Divorce in Tennessee

If you have NO children who are under 18, disabled or in high school and you do NOT own buildings or land or a business with your spouse, or have retirement benefits.

This packet has the court forms you will need to get an agreed divorce. It also explains:

- What an agreed divorce is.
- Who can get an agreed divorce.
- Steps to get an agreed divorce.
- How to get ready for your court hearing.
- Answers to common questions about divorce.
- What goes in a Divorce Agreement.

What is an agreed divorce?

Agreed means that you and your spouse agree on all points of your divorce **AND** you must meet all the rules below. An agreed divorce is easier and faster. It costs less than a regular divorce because:

- There are fewer court papers to fill out.
- You don't **have to** have a lawyer. But it's best to talk to a lawyer before starting any divorce.

Can anyone get an agreed divorce with this packet?

No! It is **only** for couples if **ALL** of these are true:

- One or both of you lived in Tennessee for at least the past 6 months **OR** you both lived in Tennessee when you decided to divorce;
- You and your spouse have no children together who are under 18, in high school, or are disabled.

Children together means children you had together that were born before your marriage **AND** any born or adopted during your marriage.

- Neither spouse is pregnant;
- You both want to end your marriage;
- You don't own buildings or land or a business together or have retirement benefits; **AND**
- You can agree on alimony and how to divide your property, and will **both** sign a Divorce Agreement (Form 5).

If any of these are **not** true for you, you **can't** use this packet! Talk to a lawyer.

Do I need a lawyer?

It is always good to talk to a lawyer if possible. You need a lawyer if:

- You find the court papers hard to understand;
- You or your spouse has an IRS qualified pension or retirement plan;
- You or your spouse own buildings or land (this is called **real property**);
- You or your spouse own a business;
- Your spouse won't sign the Divorce Agreement;
- Your spouse has a lawyer;
- You have questions about your divorce. The court can't give you legal advice;
- You don't know how to locate your spouse;
- Your spouse over controls you or makes you afraid to disagree; **OR**
- There is domestic violence. (See page 2 of these instructions for free legal help.)

Important! Only want a lawyer for part of the case? It is always best to talk to a lawyer, if possible. Having a lawyer look at your Divorce Agreement can help you.

Where can I find a lawyer?

- **Your county's Bar Association.** This is a group that lawyers join. They may have programs that can give you free advice. Or they can refer you to a lawyer.
- Look under "lawyer" in the yellow pages.
- Search for "lawyer" on the internet.
- Ask divorced friends which lawyer they used.
- Check the Administrative Office of the Court's website at: www.tncourts.gov and the Court's Access to Justice website, www.justiceforalltn.com.

Where can I get legal help and information?

- Legal information and advice hotline - 1-844-Help4TN (1-844-435-7486)
- www.Help4TN.org
 - See if you qualify for free legal help online
 - Find legal information
 - Find a list of free legal advice clinics across the state

Free Legal Help for Domestic Violence Victims

Does your spouse hurt or threaten you? There are special programs that can help you get free legal advice. They can also help if your spouse won't agree to a divorce. Call these **FREE** hotlines to find help near you.

- Tennessee Coalition for Domestic and Sexual Violence – 1-800-356-6767 / www.tcadsv.org
- Domestic Violence hotline – 1-800-799-7233

Mediation Can Help You and Your Spouse Agree.

You cannot use these forms or this packet if you and your spouse can't agree on everything in the Divorce Agreement. However, a mediator is someone who helps people agree. The mediator meets with you and your spouse to try to help you and your spouse find an agreement that is ok for both of you. Many Court Clerks have lists of mediators that you may contact.

Note: Are you a victim of domestic violence? Then you don't have to meet the mediator with your spouse. You and your spouse can have separate meetings. Sometimes a judge can waive mediation.

What if the mediator can't help us agree?

Then you can't use this packet. Talk to a lawyer about filing a regular divorce.



Before you fill out the forms, you need to know that it is against the law to commit perjury. Perjury is when you lie to the court on purpose.

Always tell the truth when you fill out the forms and when you are in court.

Steps to Get an Agreed Divorce

Tip! Make extra copies of the blank forms in this packet. This is in case you make a mistake. Also, make copies of all papers you give the Court Clerk. Ask the Clerk to date-stamp your copy. Keep all your date-stamped divorce papers in a folder or envelope. Bring it with you when you go to court.

The top of all the forms looks the same. There is a big box with 3 rows. There is an example of this box on page 3 of these instructions. The information in this box is important.

The first box in Row 1 shows that you are filing for divorce in Tennessee.

The second box in Row 1 shows the type of court where you will file for divorce. Fill out the type of court where you will file for divorce. If you don't know which court, leave this box empty. Ask the court clerk which court will hear your divorce. Then write that court in this blank. See page 5 of these instructions for more information.

The third box in Row 1 shows the name of the county where you will file for divorce. Page 5 of these instructions has information on what county you can file in. Write the name of the county where you will file for divorce in this box.

The first box in Row 2 tells the name of the form and the form number.

The second box in Row 2 has a blank for a file number and division.

Important! The court clerk will tell you the file number when you file the paperwork. Do not write in a file number until you get this information from the court clerk.

Important! Some large counties have different court divisions. Check with the court clerk to see if the court has divisions in your county. Do not fill in the division blank unless the court tells you that there is a division.

Row 3 is where you list your name and your spouse's name.

The spouse who is filing the divorce is the Plaintiff. The other spouse is the Defendant.

The information you fill out in the big box must be the same on each form.

State of Tennessee	Court _____	County _____
Form Name and Number		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce)		
Defendant _____ (Name: First, Middle, Last of the other spouse)		

Step 1	You and your spouse MUST fill out these papers. The Court Clerk can't do this for you. When they are filled out, go to the Court Clerk's office and give them (file) these papers:
<div><input type="checkbox"/> Request for Divorce, Form 1. Must be signed and notarized.</div> <div><input type="checkbox"/> Spouses' Personal Information, Form 2 Fill it out and put it in a letter-size envelope. On the outside, write both spouses' names and your case number. The Court Clerk will give you your case number.</div> <div><input type="checkbox"/> Check with your Court Clerk to see if you need to fill out a Civil Case Cover Sheet or a summons.</div>	
Step 2	If you can't afford to pay the filing fee, also fill out and give the Court Clerk (file):
If you need it	<div><input type="checkbox"/> Request to Postpone Filing Fees and Order, Form 3 The court may let you pay the filing fees at the end of your case. You and your spouse must decide how you will split the cost of the filing fees</div>
Step 3	Complete the Health Insurance Notice for Divorcing Spouses (Form 4):
<div><input type="checkbox"/> Health Insurance Notice, Form 4 Fill it out, file with Clerk and mail a copy to your spouse by certified mail. Keep a copy for your records. Not on each other's health insurance or don't have health insurance? Then write that on the paper.</div>	



Step 4	Fill out these papers and give them to the Court Clerk (file):
	<input type="checkbox"/> Divorce Agreement, Form 5. Must be signed and notarized by both you and your spouse. <input type="checkbox"/> Final Decree of Divorce, Form 6. Must be signed by both you and your spouse. <input type="checkbox"/> Court Order for Divorcing Spouses, Form 7. Must be signed by both you and your spouse. Both spouses must obey this order! <input type="checkbox"/> Divorce Certificate Ask the Clerk for this paper. Don't use a copy. Fill out as much of it as you can. Ask the Clerk about the deadline for this paper. <input type="checkbox"/> Notice of Hearing to Approve Irreconcilable Differences Divorce, Form 8
Step 5	Wait at least 60 days after filing your Request for Divorce (Form 1) then:
	<input type="checkbox"/> Call the Clerk. Has it been more than 180 days since the last person signed the Divorce Agreement? Then you must fill out a new Divorce Agreement. <input type="checkbox"/> Ask the court clerk how to get a court date for the Final Divorce Hearing. Ask if you need any other papers to set the hearing date. <input type="checkbox"/> If needed, complete and file the Notice of Hearing to Approve Irreconcilable Differences Divorce, Form 8, with the Court Clerk. You must mail your spouse a copy.
Step 6	Go to the Courthouse on the date of your Final Divorce Hearing.
	<input type="checkbox"/> It's best if both spouses go, but if you are the spouse who filed the divorce, you must go to the hearing. It's best if both spouses go to the hearing. Even though you and your spouse agree on the divorce, the judge still must approve the forms. The judge may have questions on the forms. It's in your best interest to be in court so you can answer the judge's questions. Some counties require that both spouses go to the hearing. Check with the Court Clerk. <input type="checkbox"/> What if only one spouse goes and the judge changes something? You will have to go back to court later. Bring copies of all the date-stamped divorce papers with you. Bring a copy of the Final Decree of Divorce, Form 6.
Step 7	After the hearing, go to the Court Clerk's office. Ask how to get the signed copy of the Final Divorce Order. You may have to pay for copies. You will have to pay for certified copies.
	<input type="checkbox"/> If you asked that your name be changed in the divorce papers, get a certified copy of the Final Divorce Order. <input type="checkbox"/> If your spouse did not go to the hearing, you must mail him/her a copy of this Order.

Get ready for your Court Hearing

Before the hearing:

- Dress neatly. Wear clothes that look like a businessperson. Wear clothes that show respect for the court. This means:
 - ⓧ No shorts.
 - ⓧ No tank tops or low cut tops.
 - ⓧ No crop tops that show your belly.
 - ⓧ No T-shirts with words or pictures.
 - ⓧ Turn off your cell phone or pager.
- Take all of your court papers.

- It's best if both spouses go to the hearing. Some counties require both spouses to go. Check with the Court Clerk. You don't need witnesses.
- Get to court **early** on the day of your hearing. You may need to find parking and go through security.
- Go to the Clerk's Office to make sure your case is on the calendar.
- Sit down in the courtroom. Wait for your name to be called. (There may be other cases ahead of you.)

At the hearing:

- Step forward when your name is called.
- You will be asked to raise your right hand and take an oath to tell the truth.
- After you swear to tell the truth, say this:



"My name is _____.
I am the Plaintiff in this case. I am here to get a Final Divorce Order."

- Don't sit down until your case is over.
- When you speak to the judge, say, "Your Honor." Be polite.
- The judge will look at your court papers and may ask questions. Listen carefully. Never butt in. Don't talk until the judge asks you a question. Answer all questions fully and tell the truth. What if you don't understand a question? Then ask the judge to explain or repeat it.

The judge may ask you:

- Your name and your spouse's name.
- How long you have lived in Tennessee.
- If either spouse wants their old name back.
- If a spouse is pregnant.
- If your Divorce Agreement divides the property fairly.
- If you want the court to grant the divorce.
- If you and your spouse have irreconcilable differences (cannot get along).

**You may answer, like this:**

- ☞ I have lived in Tennessee for at least 6 months.
- ☞ We are **not** expecting a child now.
- ☞ My spouse and I have no children together.
- ☞ My spouse and I have made a Divorce Agreement that is fair. We have divided all property and debt.
- ☞ I want a divorce.
- ☞ My spouse and I can't get along any more. We have no hope of working our marriage out.

What if there are mistakes on the divorce papers? The judge may ask both spouses to make the changes and initial them. **If both spouses aren't there, you will have to come back another day to correct them.**

At the hearing:

Once approved, the judge will sign the Final Divorce Order. Your divorce is not final until the judge signs the Final Divorce Order and it is filed with the Clerk.

Helpful Tip! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, you shouldn't get married again or buy any property.

After the hearing, ask the Court Clerk for certified copies of the Final Divorce Order and Divorce Agreement. You may need this later.

Common Questions About Agreed Divorce

To get an agreed divorce, do I have to prove that my spouse did something wrong?

No. You just have to say that you and your spouse can no longer get along and that you have no hope of working out your marriage problems. The court calls this "irreconcilable differences".

Do I have to live in Tennessee to file for divorce here?

One or both spouses must have lived in Tennessee for at least the last 6 months **OR** you lived in Tennessee when you decided to divorce.

Where do I file my divorce papers?

- In the county where your spouse lives now.
- **OR** in the county where you and your spouse lived when you all separated.

What if your spouse is in jail or doesn't live in Tennessee? Then file in the county where you live.

The court in each county is different. The divorce court in your county could be a Circuit, Chancery, or General Sessions Court. Ask the Court Clerk if their court hears divorce cases. **DON'T** file them in more than one court.

Will my divorce papers be public?

Yes, except for the paper called Spouses' Personal Information, Form 2. The information in that form will be kept secret. The other papers you and your spouse file at court are public record. That means anyone can look at your file. Anyone can get copies of any papers in your file.

Is there a fee to file my divorce papers?

Yes. Each county has its own fee **plus** state fees. Ask the Court Clerk's office how much you will have to pay. Bring cash with you. You must pay the Court Clerk when you file your Request for Divorce. Many Court Clerks don't take checks or credit cards.

What if I can't pay the filing fee up front?

If you can't afford the fee now, you can ask if you can pay it later. Fill out a Request to Postpone Filing Fees and Order, Form 3. Take it to the Court Clerk's office.

How soon can the divorce be granted?

The soonest is 60 days after you file your Request for Divorce. It usually will take longer.

Helpful Tip! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, you shouldn't get married again or buy any property.

Important! Until the divorce is final, you and your spouse can't do some things. You and your spouse can't:

- Disobey the Court Order for Divorcing Spouses (Form 7) **OR**
- Spend, give away, destroy, waste or use up property from the marriage **OR**
- Harass each other **OR**
- Stop or change insurance policies **OR**
- Hide, change, or destroy electronic evidence kept on a computer or memory storage device.

What if I am a victim of domestic violence?

Did your spouse hurt or threaten you? To get an agreed divorce you must talk to your spouse. What if it is not safe to contact your spouse? Then an agreed divorce may not work for you. These **free** resources can help you. They can also help if your spouse doesn't want the divorce.

- Coalition for Domestic and Sexual Violence
1-800-356-6767 – www.tcadsv.org
- National Domestic Violence hotline
1-800-799-7233
- Legal Aid or Legal Services
To find a legal aid program near you go to www.Help4TN.org
- Tennessee Alliance for Legal Services
(615) 627-0956 / 50 Vantage Way, Suite 250, Nashville, TN 37228

What is a Divorce Agreement?

The Divorce Agreement is one of the papers you must file to get an agreed divorce. It tells the court what you and your spouse agreed about alimony. It says how you will divide your money, personal property and debts. You can't use these forms if you or your spouse own buildings or land (real property).

Doesn't the court divide our property?

In an agreed divorce, the spouses decide these things together but the court has to approve. The court wants to see that you divide your property and debts fairly. You have to list how **all** the property is divided, even if you think the property belongs only to one of you. The property division does not have to be equal. The court may change things if the agreement is not fair. The court may change things if one spouse will not have enough to live on.

Do you and your spouse agree about how to divide the property fairly? Then most of the time the court will OK your agreement.

Important! The court will not OK your agreement if it is unfair.

Important! If a debt is in both spouses' names, creditors may try to collect after the divorce from either spouse even if the Divorce Agreement says that one spouse or another will pay for it. If you or your spouse have a mortgage together, you cannot use these forms.

Important! If either spouse is thinking of filing bankruptcy, talk to a lawyer. It may cause problems for the other spouse.

What if my spouse will not sign the Divorce Agreement?

Then you can't get an agreed divorce. **Don't** use this packet.

You can still file a petition for divorce **but you can't use these forms or this packet!**

Will the court decide on alimony?

Alimony is money that one spouse pays the other for support. In an agreed divorce, the spouses decide whether there should be alimony, how much it should be and for how long it should be paid. This goes in your Divorce Agreement. The Court has to approve it.

For example, some spouses decide that alimony will be paid until:

- The supported spouse remarries or lives with another person, or
- The supported spouse finishes school, or
- One of the spouses dies.

Alimony may make a significant difference in your taxes. Talk to a tax expert before you sign the Divorce Agreement.

The judge will review the proposed alimony to make sure it is fair.

What if we can't agree on alimony?

Then you can't get an agreed divorce. **Don't** use this packet. Is alimony important? Or is there a big difference in salaries? Then talk to a lawyer. You and your spouse may:

- Talk to a mediator, who may be able to help you agree, or
- Talk to a lawyer, or
- File a regular divorce.

How do we divide retirement funds?

If either spouse has retirement funds, then you need to talk to a lawyer. You can't use these forms or this packet.

Should I talk to a lawyer about the Divorce Agreement?

Yes! Talk to a lawyer about your property, debt, and alimony. Some lawyers will help with just the Divorce Agreement. You do the rest of the case on your own.

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Request for Divorce (Complaint) (Form 1)		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last) of Spouse Filing the Divorce		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form is **only** for spouses who:

- Have no children together who are under 18, in high school, or disabled, **AND**
- Agree how to divide their personal property and debts, and have no land, or businesses, or retirement benefits, except for Social Security, **AND**
- Agree to sign and notarize the Divorce Agreement, **AND**
- Lived in Tennessee when they decided to divorce **OR** one or both spouses lived in Tennessee for at least 6 months.

If you do not meet these rules, you **cannot** use these forms. Please talk to a lawyer.

You cannot use these forms if a spouse is pregnant no matter who the father is.

You may not be able to use these forms if either spouse is in the military. See sections 8 and 9.

Divorce Certificate - Get this official state paper from the court clerk. You must fill it out before going to court.

ANSWER EACH QUESTION.

① **Residency - (CHECK ALL THAT APPLY):**

- ☐ My spouse or I have lived in Tennessee for at least 6 months.
- ☐ My spouse and I were living in Tennessee when the reason for this divorce happened.
- ☐ Our differences arose in Tennessee.

② **Venue - (CHECK ONE) I am filing for divorce in this County because:**

- ☐ My spouse and I lived in this County when we separated.

Address: _____

Street Address

City

State

Zip

- ☐ My spouse lives in this County.

- ☐ I live in this County **and** my spouse does not live in Tennessee, or is in jail.

③ **Reason for Divorce** - My spouse and I can no longer get along, and we have irreconcilable differences.

④ **Children** - My spouse and I have no children together who are under 18, in high school, or disabled. Children together means children you had together, born before the marriage, and all children born or adopted during the marriage. This includes all children either spouse had during the marriage.

- ☐ No spouse is pregnant. (If a spouse is pregnant, you cannot use this form.)

⑤ **Marriage**

Date: _____ Place: _____

⑥ **Date of Separation -**

My spouse and I decided to divorce on (CHECK ONE):

- ☐ The date of filing this paper (REQUEST FOR DIVORCE); or
- ☐ The date we started living apart: (MM/DD/YYYY): _____

We were married on (MM/DD/YYYY): _____ in: _____
(City, County, State or Foreign Country)

⑦ **Orders of Protection and Other Court Orders: Check the box that is true for you.**

- ☐ There is no Order of Protection.
- ☐ The Order of Protection has ended (expired).
- ☐ There is an Order of Protection now in this court. It will stay in effect until the divorce judge changes it.

Attach a copy of the Order of Protection and write the case number here: _____

- ☐ There is an Order of Protection now in a different court. It will stay in effect until the other court ends it. **Attach a copy of the Order of Protection. Write the case number here:** _____

Restraining Order (check one):

- ☐ No Restraining Order other than the Statutory Injunction, which applies in every divorce case, has been in effect during this case. The Statutory Injunction tells both spouses not to spend, give away, destroy, waste or use up property from the marriage.
- ☐ Other (describe: _____

VICTIMS OF DOMESTIC VIOLENCE

You do not have to list a home address below. You may list an alternative address instead. For example, you can list a P.O. Box instead. The local domestic violence agency can help you. Call **1-800-356-6767** or go to **www.tcadv.org**

⑧ Plaintiff's Information

Name: First Name Middle Name Maiden Name Last Name (now)

Address: Street Address City State Zip

Birthplace
City and State or Foreign Country

Birth Date (MM/DD/YYYY):

Race: ☐ White ☐ Hispanic ☐ Black ☐ Native American ☐ Other:

How many marriages before this one?

How long has he/she lived in Tennessee?
 years months

Plaintiff's Employer:

Active Member of the Armed Services of the United States? ☐ Yes ☐ No

Reserve Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

Guard Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

If the answer is "yes" to any of the questions above, talk to a lawyer. You may not be able to use these forms.

⑨ Defendant's Information

Name: First Name Middle Name Maiden name Last name (Now)

Address: Street address City State Zip

Birthplace
City and State or Foreign Country

Birth date (MM/DD/YYYY):

Race: ☐ White ☐ Hispanic ☐ Black ☐ Native American ☐ Other:

How many marriages before this one?

How long has he/she lived in Tennessee?
 years months

Active Member of the Armed Services of the United States? ☐ Yes ☐ No

Reserve Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

Guard Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

If the answer is "yes" to any of the questions above, talk to a lawyer. You may not be able to use these forms.

⑩ Financial Information

Real Property (House, Land, or Mobile Homes that are permanently attached to the ground)
My spouse and I:
☐ Do **NOT** own Real Property. If either of you have REAL Property, you cannot use these forms.

Personal Property (such as Cars, Mobile Homes (not permanently attached to the ground), Bank Accounts)

- ☐ Own personal property and have filed the **Divorce Agreement (Form 5)** that lists how our property is divided.
- ☐ Do not own Personal Property (**such as Cars, Mobile Homes, Bank Accounts**)

(If **either** of you has a Pension or Retirement Account, **except** for Social Security, or own a Business, you **cannot** use these forms. Please see a lawyer first.)

Debts – My spouse and I (check **one**):

- ☐ Do **NOT** have debts.
- ☐ Have debts and have filed a **Divorce Agreement (Form 5)** that lists how our debts are divided.
- ☐ One or both of us has filed for a Bankruptcy and it is still active.

⑪ Alimony (check **one**):

- ☐ Neither spouse wants alimony.
- ☐ One of the spouses wants alimony, as agreed to in our Divorce Agreement.

⑫ **Name Change** (check below to change a spouse's name back to the name used before this marriage, either a maiden name or previous married name)

☐ Plaintiff requests

First Name	Middle Name	Last Name
<hr/>		

☐ Defendant requests

First Name	Middle Name	Last Name
<hr/>		

⑬ **Court Costs** (check **one**):

Who will pay the court costs for this divorce?

- ☐ Spouses will each pay half of the costs.
- ☐ Plaintiff will pay all costs.
- ☐ Defendant will pay all costs.
- ☐ Other agreement: _____

⑭ **Divorce Agreement**

Our signed **Divorce Agreement (Form 5)** is attached, and we ask the Court to approve it.

I ask the Court to grant this divorce, make the other orders I have asked for above, and to make any other orders I am entitled to.

READ THE TEXT BELOW THEN SIGN ONLY IN FRONT OF A NOTARY

Signed at (City): _____ on (Date): _____
(MM/DD/YYYY)

State of Tennessee, County of _____
(Name of County Where Notarized)

I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:

- As far as I know, the information on this form is true.
- My request for divorce is serious.
- My spouse and I have agreed not to lie about the information in this divorce. As
- far as we know, we meet all the rules to use these forms.

SWORN to and SUBSCRIBED before me, on (date): _____

Signed at (City): _____

State of Tennessee, County of _____

By (Name of Person Filing for Divorce): _____

(Signature of Person Filing for Divorce): _____

Signature of Notary Public, State of Tennessee

My commission expires: _____
MM/DD/YYYY

(NOTARY'S SEAL)

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Both Parties' Personal Information- To Be Filed Under Seal (Form 2)		File No. _____ (Must Be Completed)
		Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last) of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form asks for the personal contact information and Social Security Number of both spouses.

To protect your personal information, follow these steps:

- 1) Fill out this form.
- 2) Put the form in an unsealed envelope.
- 3) Write this information on the envelope: Names of both spouses, and Case Number of your case.
- 4) Give it to the clerk when you file your other court forms.
- 5) The court clerk will keep this information secret.

Plaintiff's Information

Name: _____
First Name Middle Name Maiden Name Last Name (now)

Address: _____
Street Address

City State Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

Defendant's Information

Name: _____
First Name Middle Name Maiden Name Last Name (now)

Address: _____
Street Address

City State Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Request to Postpone Filing Fees and Order (Uniform Civil Affidavit of Indigency (Form 3))		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

If you cannot afford to pay the filing fees at this time, fill out this form.
And file it with the completed case documents.

Even if the judge approves this form, you may have to pay court costs at the end of the case.

①

Your Information:

Address:

Street Address _____ City _____ State _____ Zip _____

Telephone Numbers:

(Home) _____ (Work) _____ (Cell) _____

Birth Date: (MM/DD/YYYY): _____

②

Dependents:

List your dependents below.

Dependents can be:

- Your children, and
- Anyone you can claim as a dependent on your taxes.

Name	Age	Relationship	Name	Age	Relationship
1.			4.		
2.			5.		
3.			6.		

③ **Employment:** If you are working now, fill out below. If you are **not** working now, check here: ☐

Employer's Name: _____

Employer's Address: _____
Street Address

City _____ State _____ Zip _____

How much do you earn after taxes are deducted?
\$ _____ Each (Check **One**): ☐ Week ☐ Month ☐ Other: _____

④ **Other Income:** List **any** other income that you get now or expect to get.

Source of Income	How much do you get?	Source of Income	How much do you get?
<input type="checkbox"/> AFDC	\$ _____ / month	<input type="checkbox"/> Unemployment	\$ _____ / month
<input type="checkbox"/> Social Security	\$ _____ / month	<input type="checkbox"/> Worker's Comp.	\$ _____ / month
<input type="checkbox"/> Retirement	\$ _____ / month	<input type="checkbox"/> Other*	\$ _____ / month
<input type="checkbox"/> Disability	\$ _____ / month	<input type="checkbox"/> SSI	\$ _____ / month

*Explain Sources of Other Income Here:
Other: _____

⑤ **Assets:** List all assets that you own separately, with your spouse, or with someone else:

Asset type:	Fair Market Value (what it's worth now)	- Money still owed	= Balance
1. Car, truck, or other vehicle			\$ _____
2. Other car, truck, or other vehicle			\$ _____
3. House, condominium, land			\$ _____
4. Other house, condominium, land			\$ _____

List all bank/financial institutions below:

Bank name. Do not put account number.	Balance
1. _____	\$ _____
2. _____	\$ _____
Cash _____	\$ _____
Total:	\$ _____

Other : _____

⑥ Expenses:

	How much each month?		How much each month?
<input type="checkbox"/> Rent/House Payment	\$ _____	<input type="checkbox"/> Gas	\$ _____
<input type="checkbox"/> Phone	\$ _____	<input type="checkbox"/> Child Care	\$ _____
<input type="checkbox"/> Groceries	\$ _____	<input type="checkbox"/> Court-ordered Child Support	\$ _____
<input type="checkbox"/> School Supplies	\$ _____	<input type="checkbox"/> Transportation	\$ _____
<input type="checkbox"/> Electricity	\$ _____	<input type="checkbox"/> Medical/Dental	\$ _____
<input type="checkbox"/> Clothing	\$ _____	<input type="checkbox"/> Other	\$ _____
<input type="checkbox"/> Water	\$ _____	<input type="checkbox"/> Other	\$ _____

⑦ Debts:

Who do you owe?	How much do you owe?	Who do you owe?	How much do you owe?
1. _____	\$ _____	4. _____	\$ _____
2. _____	\$ _____	5. _____	\$ _____
3. _____	\$ _____	6. _____	\$ _____

⑧ I declare under penalty of perjury under the laws of the State of Tennessee that:

- The information I have provided is true, correct, and complete.
- I cannot afford to pay the filing fees at this time.

Perjury means lying on purpose. If I lie on purpose I may have to pay a fine or go to jail.

Sign here: _____ Date: _____

Sworn and subscribed before me this _____ day of _____, 20_____.

 Notary Public or Deputy Clerk My Term Expires _____

IMPORTANT!

Take any proof that supports your case to the hearing, including: witnesses, photos, papers, receipts, etc. The court will not accept written statements from witnesses. The person must go to court in person. If you think a witness may not want to go to court, ask the clerk for subpoena forms. Complete the subpoena as soon as possible so the sheriff can serve them before court.

The court and clerks are not allowed to give you legal advice, even if you don't have a lawyer. This form is a public record. It is not legal advice. The law may change and it is best to consult with a lawyer if possible.

Do Not Fill Out This Section Below. The Judge Will Fill This Section Out At Court.

- ☐ The court **denies** this Request because (judge will check all that apply):
 - ☐ The applicant did not prove s/he cannot afford to pay costs associated with this case at this time.
 - ☐ The applicant did not go to the court hearing concerning this Form. This Request is dismissed.
 - ☐ The applicant must pay court costs of: \$ _____
- ☐ The court **approves** this Request and the applicant may file without paying the filing fees or costs at this time.



Judge's signature: _____ Date: _____

NOTICE: After reading this paper, the judge may decide you must pay the fees up front. If that happens, you have the right to a hearing before the judge. An appeal gives you a chance to tell your side. You may be able to appeal your case to a Circuit Court. If so, you have a right to a hearing before the Circuit Court Judge.

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Health Insurance Notice (Form 4)		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last) of Spouse Filing the Divorce		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

You must:

- Fill out this form completely, **OR** ask the person in charge of employee benefits where you work to fill it out.
- File the copy with the Court.
- Mail a copy to your spouse by certified mail. Keep a copy of this form for your records.

Important! Your spouse must receive this notice at least 30 days before the insurance coverage ends. Most courts require you to send this to your spouse before you can get a hearing date.

To (Spouse's Name): _____

(Spouse's Address): _____
Street address or P.O. Box City State Zip

From (Your Name): _____

(Your Address): _____
Street Address or P.O. Box City State Zip

If you do NOT have health insurance, check here. ☐ **Fill out the Certificate of Service section below. Mail a copy of the paper to your spouse. File this form with the court clerk's office.**

If you do HAVE health insurance that covers your spouse now, check here. ☐ **Then fill out the information about your health insurance policy that covers your spouse now:**

Health Insurance Company: _____ **Policy Number:** _____

(Employee Benefits Contact Person): (Name/Phone #/Street Address/City/State/Zip) _____

Check one:

- ☐ This policy has COBRA. That means your spouse can keep the insurance after the divorce. BUT s/he must apply by the deadline and pay the premiums and any fees. To learn more, speak to the employee benefits person listed above.
- ☐ This is a group insurance policy. Your spouse might be able to continue coverage under TCA §56-7-2312(d)(1). To learn more, speak to the employee benefits person listed above. Your spouse may also get insurance somewhere else.
- ☐ This policy does not offer COBRA. That means your spouse will lose this insurance after the divorce. Your spouse must get health insurance somewhere else.
- ☐ My spouse is not covered by my policy.

Certificate of Service:

I hereby certify that a true and exact copy of this **Health Insurance Notice** was mailed to my insured spouse on
(Date) _____, (MM/DD/YYYY) I sent it to the address listed above by certified mail.

Sign Here: _____ **Date (MM/DD/YYYY)** _____

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Divorce Agreement (Marital Dissolution Agreement) (Form 5)		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form explains how you and your spouse will divide your property and debts.
You must file this form with your **Request for Divorce, Form 1**.

Warning! Divorce cases can be hard.
It is always good to talk with a lawyer, if possible.
For information on how to get legal help, call 1-844-Help4TN (1-844-435-7486).

Check "yes" or "no" for each question below.

Is a spouse pregnant?

☐ Yes ☐ No

Does either spouse have a pension or retirement plan? This includes any retirement except Social Security. If you have any questions, see a lawyer.

☐ Yes ☐ No

Does either spouse own a business?

☐ Yes ☐ No

Does either spouse have real property (real property is houses, land, mobile homes that are permanently attached to the ground, condominiums, and cooperatives)?

☐ Yes ☐ No

If you checked "Yes" for any of the questions above, you cannot use these forms. Please talk to a lawyer.

Plaintiff: Initials _____ Date Signed: _____ Defendant: Initials _____ Date Signed: _____

We promise the Court that: (Check Yes or No for each box)

1. We are the Plaintiff and Defendant listed above. We are filing a Request for Divorce in the county and court listed above. We can no longer get along as spouses. We understand our marriage rights and duties. We want to get an agreed divorce.
☐ Yes ☐ No
2. We agree on everything in the Request for Divorce. The Request for Divorce does not have to be served, and there is no need to file an Answer.
☐ Yes ☐ No
3. Each of us has read this whole Divorce Agreement. We agree it is fair. We agree that each of us has told the other all information on assets and/or debts that we each have. We understand that the Divorce Agreement will become part of our Final Divorce Order.
☐ Yes ☐ No
4. My spouse and I have no children together who are under 18, in high school or disabled.
☐ Yes ☐ No

 Children together means children you had together that were born before your marriage AND all children born or adopted during the marriage. This includes all children either spouse had during the marriage.
5. No one made us sign this Agreement. We will sign any other papers needed to carry out this Agreement.
☐ Yes ☐ No
6. Neither spouse is pregnant.
☐ Yes ☐ No
7. We agree that this **Request for Divorce** will take effect only if the Court finds it fairly divides our assets and debts and fully provides for the care and support of our children and if the Court grants a divorce.
☐ Yes ☐ No

If you checked "No" on any box, you cannot use any of these forms to file for a divorce. If you have any questions about the Request for Divorce, or about what might happen if either of you change your mind, you need to speak with a lawyer before signing it.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Plaintiff's Personal Property

The Plaintiff will own the following property:

a. **Vehicles** (cars, motorcycles, trucks, boats, etc.)

Vehicle 1	Year	Make	Model	VIN #
Vehicle 2	Year	Make	Model	VIN #
Vehicle 3	Year	Make	Model	VIN #

b. **Other personal property** like bank accounts, cash, furniture, jewelry, trailers, etc., **not** houses or land!

Type of Account	Bank or Financial Institution	Account Number (Last four Digits)	Account Balance
Check Account			
Savings Account			
Money Market Account			
Other Account			
Other Account			

Describe other personal property: _____

c. ☐ All personal property the Plaintiff has now is his/hers.

If you need more lines, copy this page. Make sure it is included when you file this paper.

Defendant's Personal Property

The **Defendant** will own the following property:

a. Vehicles (cars, motorcycles, trucks, boats, etc.)

Vehicle 1	Year	Make	Model	VIN #
Vehicle 2	Year	Make	Model	VIN #
Vehicle 3	Year	Make	Model	VIN #

b. Other personal property like bank accounts, cash, furniture, jewelry, trailers, etc., **not** houses or land!

Type of Account	Bank or Financial Institution	Account Number (Last four Digits)	Account Balance
Check Account			
Savings Account			
Money Market Account			
Other Account			
Other Account			

Describe other personal property: _____

c. ☐ All personal property the Defendant has now is his/hers.

If you need more lines, copy this page. Make sure it is included when you file this paper.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Debt

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does **not** protect you against creditors. They may try to collect from you, even if your spouse is supposed to pay the debt. It may be best to cancel, close, or freeze any accounts you have together.

Plaintiff will pay all debts he or she has made since separating from the other spouse. He or she will also pay for the following debts:

List all loans, including car notes, credit card, cash advance debts	Name of Creditor (person or company you owe)	Account Number (last four digits)	Name on the account	Amount still owed
1.				\$
2.				\$
3.				\$
4.				\$

If you need more lines, copy this page. Make sure it is included when you file this paper.

Are any of these debts listed above joint debts? It is a joint debt if both spouses signed a Note or legal paper to pay the debt.

The Plaintiff will do his or her best to refinance or pay off these joint debts.

The Plaintiff has (choose one): ☐ 90 days ☐ 180 days ☐ 1 year from the date the Court approves this Agreement to do so or otherwise take the other spouse's name off of these joint debts.

What if the Plaintiff does not refinance or pay off the joint debts in that time?
Then the other spouse may take him or her back to Court.
The Court may order the Plaintiff's assets sold to pay off the joint debt(s).

Plaintiff: Initials _____ Date Signed: _____ Defendant: Initials _____ Date Signed: _____

Defendant will pay all debts he or she has made since separating from the other spouse. He or she will pay for the following debts:

List all loans, including car notes, credit card, cash advance debts	Name of Creditor (person or company you owe)	Account Number (last four digits)	Name on the account	Amount still owed
1.				\$
2.				\$
3.				\$
4.				\$

If you need more lines, copy this page. Make sure it is included when you file this paper.

Are any of these debts listed above joint debts? It is a joint debt if both spouses signed a Note or legal paper to pay the debt.

The Defendant will do his or her best to refinance or pay off these joint debts.

The Defendant has (choose one): ☐ 90 days ☐ 180 days ☐ 1 year from the date the Court approves this Agreement to do so or otherwise take the other spouse's name off of these joint debts.

What if the Defendant does not refinance or pay off the joint debts in that time?

Then the other spouse may take him or her back to Court.

The Court may order the Defendant's assets sold to pay off the joint debt(s).

We Both Agree on How to Divide the Debts

(Hold Harmless Provision)

Both the spouses agree to divide their debts as listed above. The Plaintiff agrees to pay all the debts listed under "Plaintiff's Debts." The Defendant agrees to pay all the debts listed under "Defendant's Debts." The Plaintiff will not try to make the Defendant pay his/her debts. The Defendant will not try to make the Plaintiff pay his/her debts.

The Plaintiff and Defendant understand that creditors can try to collect from both of them. A creditor may get one spouse to pay the other spouse's debt, even after the divorce is final. If that happens, the spouse who has agreed to pay the debt will pay the other spouse back. He or she will pay back any payments and reasonable lawyer's fees the spouse paid. He or she will pay back any costs of trying to stop a creditor from collecting the debt.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Alimony (check one):

Warning! This section can be very hard. Please talk with a lawyer if you need help with this section.

Alimony can only be changed if there are significant life changes. Sometimes it cannot be changed at all. You have to get a court order to change alimony.

If you want alimony but do not agree on all the sections below, you cannot use this form.

You must fill out each section.

☐ Neither spouse wants alimony

OR

1. The ☐ Plaintiff ☐ Defendant agrees to pay (amount) \$: _____.

2. We agree that the alimony (check all the boxes that are true for your agreement):

- ☐ Will be paid until this date _____
- ☐ Will end when the one who gets the alimony dies or gets married again.
- ☐ Will end when the one who gets the alimony finishes school, or on _____, whichever date comes first.
- ☐ Or if this happens _____
- ☐ Will not be modified.

The court can modify the alimony due to significant changes in our lives, or if the person receiving alimony lives with another person, with or without a romantic relationship.

3. We agree that the alimony will be paid (you must check one):

- ☐ Weekly
- ☐ Monthly
- ☐ Other: _____
- ☐ Lump sum paid all at one time.

Important! Both of us understand alimony may change our federal taxes. Unless we specifically agree otherwise, the payor will be able to deduct it on his/her tax return and the person receiving it will have to declare it as income. Our initials at the bottom of this page show we understand this. We agree we are responsible for knowing, understanding and accepting this.

Name Change

Check below to change a spouse's name back to the name used before this marriage (maiden name or previous married name). A government agency or other business may need proof of this name change. If so, give them a filed copy of this form.

☐ Plaintiff _____
First Middle Last

☐ Defendant _____
First Middle Last

Plaintiff Initials: _____ Date Signed: _____ Defendant Initials: _____ Date Signed: _____

Court Costs will be paid by (check one)

- ☐ Plaintiff
- ☐ Defendant
- ☐ Plaintiff and Defendant will each pay half
- ☐ Other (explain): _____

Waiver of Service

By signing this Agreement, the Plaintiff and Defendant agree they do not have to serve each other with divorce papers. This form is only good for 180 days after the last spouse signs it. Your final hearing must be within those 180 days. If the 180 days has passed, you will have to fill out, sign, and file this form again. The spouses understand that they do not have to file an Answer to a Complaint for Divorce.

Entire Agreement

This document says everything the Plaintiff and Defendant agreed to in this divorce. If they agreed with each other about anything else, the court cannot make them do it.

Warning - Changes Modification

This form is a legal contract. It is very important this contract is completely filled out. Make sure that you are OK with everything that is in it before you sign it. Speak to a lawyer before signing or if you have any questions.

Plaintiff Initials: _____ Date Signed: _____

Defendant Initials: _____ Date Signed: _____

<p>Read below, but only sign in front of a notary. You may sign at a different time than your spouse, if you want.</p> <p>Plaintiff</p> <p>I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:</p> <ul style="list-style-type: none">• As far as I know, the information on this form is true.• I have told my spouse about all property and all debts that I know about. I have not kept any property or debts a secret from my spouse before I signed this agreement.• This is everything we have agreed to.• Any Agreements we have that are not listed above are no longer any good. <p>I understand that even if one of us changes his or her mind after we both sign it, the Court may still enforce the Request for Divorce.</p> <p>SWORN to and SUBSCRIBED before me, on</p> <p>(date): <u>MM/DD/YYYY</u></p> <p>Signed at (city): _____</p> <p>State of Tennessee, County of _____</p> <p>By (Plaintiff): _____</p> <p>_____ Signature of Notary Public, State of Tennessee My commission expires on: <u>MM/DD/YYYY</u></p> <p>(Notary's seal)</p>	<p>Read below, but only sign in front of a notary. You may sign at a different time than your spouse, if you want.</p> <p>Defendant</p> <p>I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:</p> <ul style="list-style-type: none">• As far as I know, the information on this form is true.• I have told my spouse about all property and all debts that I know about. I have not kept any property or debts a secret from my spouse before I signed this agreement.• This is everything we have agreed to.• Any Agreements we have that are not listed above are no longer any good. <p>I understand that even if one of us changes his or her mind after we both sign it, the Court may still enforce the Request for Divorce.</p> <p>SWORN to and SUBSCRIBED before me, on</p> <p>(date): <u>MM/DD/YYYY</u></p> <p>Signed at (city): _____</p> <p>State of Tennessee, County of _____</p> <p>of By (Defendant): _____</p> <p>_____ Signature of Notary Public, State of Tennessee My commission expires on: <u>MM/DD/YYYY</u></p> <p>(Notary's seal)</p>
---	--

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Final Decree of Divorce (with Marital Dissolution Agreement) (Form 6)		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce)		
Defendant _____ (Name: First, Middle, Last of the other spouse)		

If you are ready to finalize your divorce, you must fill out this form and file it with the court clerk. Only the spouse asking for the divorce must sign it, and that spouse **must go** to the court hearing. **BUT**, it is a good idea for **both** spouses to go in case the court has questions. Ask the court clerk for the rules in your county.

The Judge does not have to sign this Order if he/she thinks your Divorce Agreement is not fair.

Take a copy of this form with you to your court hearing. It is best to take all copies of documents you have filed in this case and take:

- **Divorce Agreement**, Form 5, signed by both spouses and notarized if not filed with Request for Divorce
- **Divorce Certificate** - you must get the official state form and have it filled out before court.

Court Hearing and Findings:

On (Date) _____, there was a court hearing at the court and county listed above
 (MM/DD/YYYY)
 before _____
 (Judge's Name)

Parties at the Hearing:

☐ **Plaintiff (Spouse filing the divorce):**

Street or P.O. Box _____ City _____ State _____ Zip _____ Phone # _____

☐ **Defendant (The other spouse):**

Street or P.O. Box _____ City _____ State _____ Zip _____ Phone # _____

The Court affirmatively finds as follows:

- ① The spouses have sworn and affirmed that they do not have any children together who are under 18, in high school, or disabled and neither spouse is pregnant. Children together means children they had together before the marriage and all children born or adopted during their marriage.
- ② The spouses have both signed under penalty of perjury a Divorce Agreement (Marital Dissolution Agreement). That Agreement has disclosed fully the spouses' assets and liabilities and the court finds it equitably settles any and all property rights between them.

③ **Alimony**

- ☐ Neither spouse wants alimony OR
- ☐ The (check one): ☐ Plaintiff ☐ Defendant agrees to pay (amount):\$ _____
until (date): _____ each
- ☐ Week ☐ Month ☐ Other _____
- ☐ The alimony will end on (date): _____ OR
- ☐ The alimony will end when this happens _____

- ④ The spouses are now divorced based on irreconcilable differences and are restored to the rights and privileges of unmarried persons. The Divorce Agreement (Marital Dissolution Agreement) is now a part of this Final Decree of Divorce.

⑤ **Orders of Protection (check one):**

- ☐ Neither party has a current Protective Order.
- ☐ The Court ends the current Protective Order.
- ☐ The Court continues the current Protective Order from this Court until (MM/DD/YYYY): _____.
Attach a Copy of the Order of Protection. Write the Case Number here: _____
- ☐ The parties have an Order of Protection in a different court. This Final Divorce Order does not change that Order of Protection.
Attach a Copy of the Order of Protection. Write the Case Number here: _____

Restraining Order (check one):

- ☐ Neither party has a current restraining order or wants a restraining order.
- ☐ The Court order both parties not to hurt or threaten the other.
- ☐ The Court further orders that they cannot contact each other after the divorce is final. They also cannot send messages to each other through other people.

⑥ **Name Change (check all that apply):**

- ☐ This Order does not change either party's name.
- ☐ This Order changes the Plaintiff's name to:

First Name Middle Name Last Name

- ☐ This Order changes the Defendant's name to:

First Name Middle Name Last Name

Important! You need to change your name on your driver's license or other records. You may need a certified copy of this Order to do that.

⑦ **Lawyers' fees (check one):**

- ☐ Neither side has a lawyer.
- ☐ The Plaintiff will pay for his/her lawyer's fees. The Defendant will pay for his/her lawyer's fees.
- ☐ Other (explain):

⑧ **Court Costs will be paid as follows (check one):**

- ☐ The Plaintiff and Defendant will each pay half of the court costs.
- ☐ Plaintiff will pay all costs.
- ☐ Defendant will pay all costs.
- ☐ Other agreement: _____

⑨ **Other Orders**

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does **not** protect you against creditors. They may try to collect from you, even if your spouse is responsible for the debt. It may be best to cancel, close, or freeze any accounts you have together.

This Order is made on Date (MM/DD/YYYY): _____ by:

Judge's signature

This Order is not final until 30 days after the Judge signs it. During those 30 days, you may have questions about remarrying or buying property. If so, talk to a lawyer.

Presented by: _____
Person Getting the Order

Plaintiff's Signature _____

Date (MM/DD/YYYY): _____ Plaintiff's Phone Number: _____

Defendant's Signature _____

Date: (MM/DD/YYYY) _____ Defendant's Phone Number: _____

If your spouse did not go to this hearing, you must mail him/her a copy of this signed Final Divorce Order. Then fill out the part below.

Certificate of Service:

I swear and affirm that a copy of the Final Divorce Order was given to my spouse. It was delivered in person or sent by first-class U.S. Mail to this address:

I did so on the _____ day of _____, 20____.

Spouse who mails it signs here

Date (MM/DD/YYYY): _____

Street Address

City, State, Zip

Phone number:

ATTACHED:

- ☐ Divorce Agreement - Marital Dissolution Agreement (if not already submitted)
- ☐ Divorce Certificate (if not already submitted)
- ☐ Other: _____

State of Tennessee	Court _____ (Must be completed)	County _____ (Must be completed)
Restraining Order for Divorcing Spouses (Statutory Injunction) (Form 7)		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
Plaintiff: _____ (Name: First, Middle, Last of spouse filing this paper)		
Defendant: _____ (Name: First, Middle, Last of the other spouse)		

Both spouses must obey all state law below until the divorce is granted.

If you do not obey them, you may be held in contempt.

Behavior You must not:

- Bother, harass, threaten, assault or abuse your spouse.
- Talk about your spouse in a bad way to or in front of your children, your spouse's children, or your spouse's employer.
- Hide, destroy, or spoil any evidence stored on a computer hard drive or memory storage device.

Property & Money

- **DO NOT** do anything to any property that makes it worth less money. This means you can't sell, spend, destroy, harm, transfer, assign, borrow against, hide, or do anything with it. This is true unless the court orders it or your spouse agrees.
- You may use your income for expenses that:
 - Let you keep living as well as you did when married,
 - Pay the usual costs for your business the same way you always do.
- You must keep records of all expenses. If he/she asks, you must give your spouse copies of those records.

Children You must not move the children:

- Out of Tennessee, or
- More than 50 miles from the home where you lived while married. This is true unless the court orders it or your spouse agrees.

Important! Do you have a good reason to be afraid that your spouse might hurt you or your children? Then you may go with your children to a safe place. Later, the other spouse may ask the court for an emergency hearing and new Orders. The court can hold the hearing by phone, if needed.

Important! If you want to move with the children out of Tennessee or more than 50 miles away after the divorce, Tennessee's relocation law applies. You must speak with a lawyer.

Insurance Unless the court orders it or your spouse agrees, you must not:

- Change, cancel, or transfer **any** insurance policy that covers either spouse or the children.
- Change, cancel, or transfer **any** insurance policy that names either spouse or the children as beneficiary.
- Stop paying for **any** insurance policy premium that covers either spouse or the children.

You **must** follow this Order unless the court changes or ends it, OR your case is final or dismissed. OR you and your spouse make an agreement. Either spouse may ask the court to change or cancel this Order.

Plaintiff's Signature

Defendant's Signature

State of Tennessee	Court: _____ (Must Be Completed)	County: _____ (Must Be Completed)
Notice of Hearing to Approve Irreconcilable Differences Divorce (Form 8)		File No.: _____ (Must Be Completed) Division: _____ (Large Counties Only)
Plaintiff: _____ (Name: First, Middle, Last of spouse filing the divorce)		
Defendant _____ (Name: First, Middle, Last of the other spouse)		

This case is set for hearing at the court above on:

_____, 20____ at _____

☐ a.m.
☐ p.m.

(Month/Day)

Location: Room # _____
(Street) (City, State, Zip)

Presented by: _____

Person asking for the Hearing to approve the irreconcilable differences divorce _____

Certificate of Service

I swear and affirm that a copy of this Notice was given to my spouse. It was delivered in person or sent by first-class U.S. Mail to this address:

I did so on the _____ day of _____ 20_____.

Person asking for the Order: _____

Street Address: _____

City, State, Zip _____

Phone number: _____

Appendix B

Forms and Instructions for Divorces With Children Court-Approved Pursuant to Tenn. Sup. Ct. R. 52

How to Get an Agreed Divorce With Children in Tennessee

If you have children who are under 18, disabled or in high school
AND

you do NOT own buildings or land or a business with your spouse, or have retirement benefits.

This packet has the court forms you will need to get an agreed divorce. It also explains:

- What an agreed divorce is
- Who can get an agreed divorce
- Steps to get an agreed divorce
- How to get ready for your court hearing
- Answers to common questions about divorce
- What goes in a Divorce Agreement

What is an agreed divorce?

Agreed means that you and your spouse agree on all points of your divorce **AND** you both must meet all the rules below. An agreed divorce is easier and faster. It costs less than a regular divorce because:

- There are fewer court papers to fill out.
- You don't **have** to have a lawyer. But it's best to talk to a lawyer before starting any divorce.

Can anyone get an agreed divorce with this packet?

No! This packet is only for couples if **ALL** of these rules are true:

- You and your spouse have children together that are under 18, in high school, or are disabled. Children together means children you had together that were born before your marriage **AND** all children born or adopted during your marriage.
- One or both of you lived in Tennessee for at least the past 6 months with the children **OR** you both lived in Tennessee when you decided to divorce and the children have lived here for at least six months;
- Neither spouse is pregnant;
- You both want to end your marriage;
- You don't own buildings or land or a business together or have retirement benefits;
- You can agree on alimony and how to divide your property, and will **both** sign a Divorce Agreement (Form 5).
- You can agree on the child support amount and the Parenting Plan. Child support must comply with Tennessee's Child Support Guidelines.

If any of these are **not** true for you, you can't use this packet! Talk to a lawyer.

Important! You can't use these forms if:

- One of the children born while you were married to each other has a different biological father and has not been adopted by you and your spouse, **OR**
- Somebody else (not either parent) has a court order giving them custody or visitation.

Do I need a lawyer?

It is always good to talk with a lawyer if possible. You need a lawyer if:

- You find the court papers hard to understand;
- You or your spouse has a pension or retirement plan;
- You or your spouse own buildings or land (this is called **real property**);
- You or your spouse own a business;
- Your spouse won't sign the Divorce Agreement;
- Your spouse has a lawyer;
- You have questions about your divorce. The court can't give you legal advice;
- You don't know how to locate your spouse;
- Your spouse over controls you or makes you afraid to disagree; **OR**
- There is domestic violence. (See page 2 of these instructions for free legal help.)

Important! Only want a lawyer for part of the case? It is always best to talk to a lawyer, if possible. Having a lawyer look at your Divorce Agreement can help you.

Where can I find a lawyer?

- **Your county's Bar Association.** This is a group that lawyers join. They may have programs that can give you free advice. Or they can refer you to a lawyer.
- Look under "lawyer" in the yellow pages.
- Search for "lawyer" on the internet.
- Ask divorced friends which lawyer they used.
- Check the Administrative Office of the Court's website at: www.tncourts.gov and the Court's Access to Justice website, www.justiceforalltn.com.

Where can I get legal help and information?

- Legal information and advice hotline –1-844-Help4TN (1-844-435-7486)
- www.Help4TN.org
 - See if you can get free legal help online
 - Find legal information
 - Find a list of free legal advice clinics across the state

Free Legal Help for Domestic Violence Victims

Does your spouse hurt or threaten you? There are special programs that can help you get free legal advice. They can also help if your spouse won't agree to divorce. Call these **FREE** hotlines to find help near you.

- Tennessee Coalition for Domestic and Sexual Violence – **1-800-356-6767 / www.tcadsv.org**
- Domestic Violence hotline – **1-800-799-7233**

Steps to Get an Agreed Divorce

Tip! Make extra copies of the blank forms in this packet. This is in case you make a mistake. Also, make copies of all papers you give the Court Clerk. Ask the Clerk to date-stamp your copy. Keep all your date-stamped divorce papers in a folder or envelope. Bring it with you when you go to court.

The top of all the forms looks the same. There is a big box with 3 rows. There is an example of this box on page 3 of these instructions. The information in this box is important.

The first box in Row 1 shows that you are filing for divorce in Tennessee.

The second box in Row 1 shows the type of court where you will file for divorce. Fill out the type of court where you will file for divorce. If you don't know which court, leave this box empty. Ask the court clerk which court will hear your divorce. Then write that court in this blank. See page 7 of these instructions for more information.

The third box in Row 1 shows the name of the county where you will file for divorce. Page 7 of these instructions has information on what county you can file in. Write the name of the county where you will file for divorce in this box.

Mediation Can Help You and Your Spouse Agree.

You cannot use these forms or this packet if you and your spouse can't agree on everything in the Divorce Agreement. However, a mediator is someone who helps people agree. The mediator meets with you and your spouse to try to help you and your spouse find an agreement that is ok for both of you. Many Court Clerks have lists of mediators that you may contact.

Note: Are you a victim of domestic violence? Then you don't have to meet the mediator with your spouse. You and your spouse can have separate meetings. Sometimes, a judge can waive mediation.

What if the mediator can't help us agree?

Then you can't use this packet. Talk to a lawyer about filing a regular divorce.



Before you fill out the forms, you need to know that it is against the law to commit perjury. Perjury is when you lie to the court on purpose.

Always tell the truth when you fill out the forms and when you are in court.

The first box in Row 2 tells the name of the form and the form number.

The second box in Row 2 has a blank for a file number and division.

Important! The court clerk will tell you the file number when you file the paperwork. Do not write in a file number until you get this information from the court clerk.

Important! Some large counties have different court divisions. Check with the court clerk to see if the court has divisions in your county. Do not fill in the division blank unless the court tells you that there is a division.

Row 3 is where you list your name and your spouse's name. The spouse who is filing the divorce is the Plaintiff. The other spouse is the Defendant.

The information you fill out in the big box must be the same on each form.

State of Tennessee	Court _____	County _____
Form Name and Number		File No. _____ (Must Be Completed) Division _____ (Large Counties Only)
<p>Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce)</p> <p>Defendant _____ (Name: First, Middle, Last of the other spouse)</p>		

Step 1	<p>You and your spouse MUST fill out these papers. The Court Clerk can't do this for you. When they are filled out, go to the Court Clerk's office and give them (file) these papers:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Request for Divorce, Form 1. Must be signed and notarized. <input type="checkbox"/> Spouses' Personal Information, Form 2 Fill it out and put it in a letter-size envelope. On the outside, write both spouses' names and your case number. The Court Clerk will give you your case number. <input type="checkbox"/> Check with your Court Clerk to see if you need to fill out a Civil Case Cover Sheet or a summons. <input type="checkbox"/> Title IV-D Information Form, Form 10. This form is only needed if one or both parents receive benefits from the State of Tennessee or child support. Fill it out and check with the court clerk to see if you need to file this form.
Step 2	<p>If you can't afford to pay the filing fee, also fill out and give the Court Clerk (file):</p> <p>If you need it <input type="checkbox"/> Request to Postpone Filing Fees and Order, Form 3 The court may let you pay the filing fees at the end of your case. You and your spouse must decide how you will split the cost of the filing fees</p>



Step 3 Complete the Health Insurance Notice for Divorcing Spouses (Form 4):

- ☐ Health Insurance Notice, Form 4
Fill it out, file with Clerk and mail a copy to your spouse by certified mail. Keep a copy for your records. Not on each other's health insurance or don't have health insurance? Then write that on the paper.

Step 4 Fill out these papers and give them to the Court Clerk (file):

- ☐ Divorce Agreement, Form 5. Must be signed and notarized by both you and your spouse.
- ☐ Parenting Plan Form and the Child Support Worksheet. Download the Parenting Plan at www.tncourts.gov or www.justiceforalltn.com. Must be signed and notarized by both you and your spouse.
- ☐ Final Decree of Divorce, Form 6. Must be signed by both and your spouse.
- ☐ Court Order for Divorcing Spouses, Form 7 Must be signed by both you and your spouse. Both spouses must obey this order!
- ☐ Divorce Certificate
Ask the Clerk for this paper. Don't use a copy. Fill out as much of it as you can. Ask the Clerk about the deadline for this paper.
- ☐ Notice of Hearing to Approve Irreconcilable Differences Divorce, Form 8

Step 5 Wait at least 90 days after filing your Request for Divorce (Form 1) then:

- ☐ Call the Clerk. Has it been more than 180 days since the last person signed the Divorce Agreement? Then you must fill out a new Divorce Agreement.
- ☐ Ask the court clerk how to get a court date for the Final Divorce Hearing. Ask if you need any other papers to set the hearing date.
- ☐ If needed, complete and file the Notice of Hearing to Approve Irreconcilable Differences Divorce, Form 8, with the court clerk. You must mail your spouse a copy.

Step 6 Go to the Courthouse on the date of your Final Divorce Hearing.

- ☐ It's best if both spouses go, but if you are the spouse who filed the divorce, you must go to the hearing. It's best if both spouses go to the hearing. Even though you and your spouse agree on the divorce, the judge still must approve the forms. The judge may have questions on the forms. It's in your best interest to be in court so you can answer the judge's questions. Some counties require that both spouses go to the hearing. Check with the court clerk.
- ☐ What if only one spouse goes and the judge changes something? You will have to go back to court later. Bring copies of all the date-stamped divorce papers with you. Bring a copy of the Final Decree of Divorce, Form 6.

Step 7 After the hearing, go to the Court Clerk's office. Ask how to get the signed copy of the Final Divorce Order. You may have to pay for copies. You will have to pay for certified copies.

- ☐ If you asked that your name be changed in the divorce papers, get a certified copy of the Final Divorce Order.
- ☐ If your spouse did not go to the hearing, you **must** mail him/her a copy of this Order.

Important Information about Child Support and the Parenting Plan

All divorcing spouses with minor children must complete the Child Support Worksheet. The Child Support Worksheet will tell you the child support amount. You can download the Child Support Worksheet at <http://www.state.tn.us/humanserv/is/isdocuments.html>.

The Child Support Worksheet is completed at the same time you complete the Parenting Plan. All divorcing spouses with minor children must complete the Parenting Plan. You can find the Parenting Plan Form at <http://www.tncourts.gov/programs/parenting-plan/forms>. You have to know the child support amount to complete the Parenting Plan.

Important! You must attach the completed Parenting Plan form to the Divorce Agreement, Form 5. File the Divorce Agreement, Form 5, and the Parenting Plan together.

There are a few ways that the spouse that owes child support can pay the other spouse. You make your choice on the Parenting Plan form.

You can agree that the child support will be paid using one of the ways below.

- The spouse that owes child support will pay the other spouse directly, OR
- The spouse that owes child support will pay the child support to the State's Central Child Support Receiving Unit. Then the Central Child Support Receiving Unit will send the support to the other parent, OR
- The child support will be paid by Wage Assignment Order. A Wage Assignment Order is where the child support is automatically taken out of the paycheck of the spouse that owes child support, OR
- The spouse that owes child support will set up a direct deposit to the other parent, OR
- Other arrangements that the court can approve.

If you want to agree to use a Wage Assignment Order, you can use Form 9 – Wage Assignment Order in this packet.

IMPORTANT! If one or both of the parents receives SNAP Food Stamps, Families First (AFDC), and/or TennCare from the State of Tennessee, you may have to use a Wage Assignment Order. Contact the Department of Human Services to see if you have to use wage assignment or can use another way.

IMPORTANT! If one or both of the parents receives SNAP Food Stamps, Families First (AFDC), and/or TennCare from the State of Tennessee, you may have to fill out a Title IV-D Child Support Information Form. Ask the court clerk if you need to fill out this form. You can use the Form 10 – Title IV-D Child Support Information Form in this packet.

IMPORTANT! All divorcing spouses with minor children are required to attend a parent education class unless the court says you don't have to. Ask the court clerk where you can go to take the class. You can find information on the parent education class at <http://www.tncourts.gov/node/254532>.

You can find more information about child support from the Tennessee Child Support Handbook located at http://www.state.tn.us/humanserv/cs/cs_handbook.pdf.

Please talk to a lawyer if you have questions about child support.

Get ready for your Court Hearing

Before the hearing:

- Dress neatly. Wear clothes that look like a businessperson. Wear clothes that show respect for the court. This means:
 - ⊗ No shorts.
 - ⊗ No tank tops or low cut tops.
 - ⊗ No crop tops that show your belly.
 - ⊗ No T-shirts with words or pictures.
 - ⊗ Turn off your cell phone or pager.
- Take all of your court papers.
- It's best if both spouses go to the hearing. Some counties require both spouses to go. Check with the Court Clerk. You don't need witnesses.
- Get to court **early** on the day of your hearing. You may need to find parking and go through security.
- Go to the Clerk's Office to make sure your case is on the calendar.
- Sit down in the courtroom. Wait for your name to be called. (There may be other cases ahead of you.)

At the hearing:

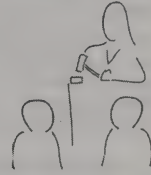
- Step forward when your name is called.
- You will be asked to raise your right hand and take an oath to tell the truth.
- After you swear to tell the truth, say this:

"My name is _____, I am the Plaintiff in this case. I am here to get a Final Divorce Order."
- Don't sit down until your case is over.
- When you speak to the judge, say, "Your Honor." Be polite.
- The judge will look at your court papers and may ask questions. Listen carefully. Never butt in. Don't talk until the judge asks you a question. Answer all questions fully and tell the truth. What if you don't understand a question? Then ask the judge to explain or repeat it.

The judge may ask you:

- Your name and your spouse's name
- How long you have lived in Tennessee
- If either spouse wants their old name back
- If a spouse is pregnant

- If your Divorce Agreement divides the property fairly
- If the Parenting Plan provides for the care and support of the children and if it is in their best interest
- If you want the court to grant the divorce
- If you and your spouse have irreconcilable differences (cannot get along)



You may answer like this:

- ☑ I have lived in Tennessee for at least 6 months.
- ☑ We are **not** expecting a child now.
- ☑ My spouse and I have children together. We have agreed on a Parenting Plan and child support. We think our agreement is in the best interest of the children. We have told the court about any other cases involving custody of the children.
- ☑ My spouse and I have made a Divorce Agreement that is fair. We have divided all property and debt.
- ☑ I want a divorce.
- ☑ My spouse and I can't get along any more. We have no hope of working our marriage out.

What if there are mistakes on the divorce papers? The judge may ask both spouses to make the changes and initial them. **If both spouses aren't there, you will have to come back another day to correct them.**

At the hearing:

Once approved, the judge will sign the Final Divorce Order. Your divorce is not final until the judge signs the Final Divorce Order and it is filed with the Clerk.

Helpful Tip! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, you shouldn't get married again or buy any property.

After the hearing, ask the Court Clerk for certified copies of the Final Divorce Order and Divorce Agreement. You may need this later.

Common Questions About Agreed Divorce

To get an agreed divorce, do I have to prove that my spouse did something wrong?

No. You just both have to agree that you and your spouse can no longer get along and that you have no hope of working out your marriage problems. The court calls this "irreconcilable differences".

Do I have to live in Tennessee to file for divorce here?

One or both spouses must have lived in Tennessee for at least the last 6 months **OR** you lived in Tennessee when you decided to divorce.

Where do I file my divorce papers?

- In the county where your spouse lives now.
- **OR** in the county where you and your spouse lived when you all separated.

What if your spouse is in jail or doesn't live in Tennessee? Then file in the county where you live.

The court in each county is different. The divorce court in your county could be a Circuit, Chancery, or General Sessions Court. Ask the Court Clerk if their court hears divorces cases. **DON'T** file them in more than one court.

Will my divorce papers be public?

Yes, except for the paper called Spouses' Personal Information, Form 2. The information in that form will be kept secret. The other papers in this packet that you and your spouse file at court are public record. That means anyone can look at your file. Anyone can get copies of any papers in your file.

Is there a fee to file my divorce papers?

Yes. Each county has its own fee **plus** state fees. Ask the Court Clerk's office how much you will have to pay. Bring cash with you. You must pay the Court Clerk when you file your Request for Divorce. Many Court Clerks don't take checks or credit cards.

What if I can't pay the filing fee up front?

If you can't afford the fee now, you can ask if you can pay it later. Fill out a Request to Postpone Filing Fees and Order, Form 3. Take it to the Court Clerk's office.

How soon can the divorce be granted?

Because you have minor children together, the soonest is 90 days after you file your Request for Divorce. It usually takes longer.

Helpful Tip! After the court makes the Final Divorce Order, each spouse has 30 days to appeal. During this 30-day period, you shouldn't get married again or buy any property.

Important! Until the divorce is final, you and your spouse can't do some things. You and your spouse can't:

- Disobey the Court Order for Divorcing Spouses (Form 7) **OR**
- Spend, give away, destroy, waste or use up property from the marriage **OR**
- Harass each other **OR**
- Stop or change insurance policies **OR**
- Hide, change, or destroy electronic evidence kept on a computer or memory storage device

What if I am a victim of domestic violence?

Did your spouse hurt or threaten you? To get an agreed divorce you must talk to your spouse. What if it is not safe to contact your spouse? Then an agreed divorce may not work for you. These **free** resources can help you. They can also help if your spouse doesn't want the divorce.

- Coalition for Domestic and Sexual Violence
- **1-800-356-6767** – www.tcadsv.org
National Domestic Violence hotline
1-800-799-7233
- Legal Aid or Legal Services
To find a legal aid program near you go to www.Help4TN.org

What if there is an Order of Protection in place?

- If the Order of Protection was issued in a different court, you must contact the court clerk in that court to change or dismiss the Order of Protection. Bring a copy of the Order of Protection with you to court.
- If the Order of Protection was issued in this court, you should notify the judge if you want to change or dismiss it. Bring a copy of the Order Of Protection with you to court.

What is a Divorce Agreement?

The Divorce Agreement is one of the papers you must file to get an agreed divorce. It tells the court what you and your spouse agreed about alimony. It says how you will divide your money, personal property and debts. What happens with your children is covered in another document called a Parenting Plan. You can't use these forms if you or your spouse own buildings or land (real property).

Doesn't the court divide our property?

In an agreed divorce, the spouses decide these things together, but the court has to approve. The court wants to see that you divide **all** your property and debts fairly. You have to list how **all** the property is divided. Even if you think the property belongs to only one of you, it must still be on this list. The property division doesn't have to be equal. The court may change things if the agreement is not fair. The court may change things if one spouse will not have enough to live on.

Do you and your spouse agree about how to divide the property fairly? Then most of the time the court will OK your agreement.

Important! If the agreement is unfair, the court will not OK it.

Important! If a debt is in both spouses' names, creditors may try to collect after the divorce from either spouse even if the Divorce Agreement says that one spouse or another will pay for it. If you or your spouse have a mortgage together, you cannot use these forms or this packet.

Important! If either spouse is thinking of filing bankruptcy, talk to a lawyer. It may cause problems for the other spouse.

What if my spouse will not sign the Divorce Agreement?

Then you can't get an agreed divorce. **Don't** use this packet.

You can still file a petition for divorce **but you can't use these forms or this packet!**

Will the court decide on alimony?

Alimony is money that one spouse pays the other for spousal support. In an agreed divorce, the spouses decide whether there should be alimony, how much it should be and for how long it should be paid. This goes in your Divorce Agreement. The Court has to approve it.

For example, some couples may decide that alimony will be paid until:

- The supported spouse remarries or lives with another person, or
- The supported spouse finishes school, or
- One of the spouses dies.

Alimony can make a significant difference in your taxes. Talk to a tax expert before you sign the Divorce Agreement.

The judge will review the proposed alimony to make sure it is fair.

What if we can't agree on alimony?

Then you can't get an agreed divorce. **Don't** use this packet. Is alimony important? Or is there a big difference in salaries? Then talk to a lawyer. You and your spouse may:

- Talk to a mediator, who may be able to help you agree, or
- Talk to a lawyer, or
- File a regular divorce.

How do we divide retirement funds?

If either spouse has retirement funds, then you need to talk to a lawyer. You can't use these forms or this packet.

Should I talk to a lawyer about the Divorce Agreement?

Yes! Talk to a lawyer about your children, property, debt, and alimony. Some lawyers will help with just the Divorce Agreement. You do the rest of the case on your own.

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Request for Divorce (Complaint) (Form 1)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form is **only** for spouses who:

- Have children together who are under 18, in high school, or disabled **AND**
- Have agreed on parenting time, responsibilities, and child support **AND**
- Agree how to divide their personal property and debts, and have no land, or businesses, or retirement benefits, except for social security **AND**
- Agree to sign and notarize the Divorce Agreement and the Parenting Plan **AND**
- Lived in Tennessee when they decided to divorce **OR** one or both spouses lived in Tennessee for at least 6 months.

If you do not meet these rules, you **cannot** use these forms. Please talk to a lawyer.

You cannot use these forms if:

- One of the children born while you are married is not both spouses' child. Warning! If this is true, speak to a lawyer. **OR**
- Somebody else has a court order giving them custody or visitation **OR**
- A spouse is pregnant no matter who the father is.

You may not be able to use these forms if either spouse is in the military. See sections 8 and 9.

Divorce Certificate - Get this official state paper from the court clerk. You must fill it out before going to court.

ANSWER EACH QUESTION.

① **Residency - (check all that apply):**

- ☐ My spouse or I have lived in Tennessee for at least 6 months.
- ☐ My spouse and I were living in Tennessee when the reason for this divorce happened.
- ☐ Our differences arose in Tennessee.

② **Venue - (check one) I am filing for divorce in this County because:**

- ☐ My spouse and I lived in this County when we separated.

Address: _____

Street Address

City

State

Zip

- ☐ My spouse lives in this County.

- ☐ I live in this County **and** my spouse does not live in Tennessee, or is in jail.

③ **Reason for Divorce** - My spouse and I can no longer get along, and we have irreconcilable differences.

④ Children

List all children you and your spouse have **together**. Children together means:

- Children you had together that were born before the marriage and all children born or adopted during the marriage. This includes ALL children either spouse had during the marriage.
The children must be:
 - Under age 18
 - Or over 18 and disabled
 - Or over 18 and still in high school

If you have children, you may need to speak with a lawyer.

The parties have _____ children together.

Child's Name	Child's Date of Birth

The children have lived at this address _____

(children's current address)

with _____
(names of people who currently live with children)

since _____ 20_____.
(date children began living here)

For the last five years, the children have lived with:

(Persons, addresses, and dates)

Could another court case impact custody or visitation of a child? ☐ Yes ☐ No
(If yes, you cannot use these forms.)

Has either spouse been part of a current court case about these minor children? ☐ Yes ☐ No
(If yes, you cannot use these forms.)

The Plaintiff is the person filing for divorce. As far as the Plaintiff knows, no one except their spouse has a right to custody or visitation with the minor children. Plaintiff has not been part of any court case about the minor children in any state. If there is another court case about the minor children, the Plaintiff does not know about it.

☐ No spouse is pregnant. (If a spouse is pregnant, you cannot use this form.)

⑤ Marriage

Date: _____ Place: _____

⑥ **Date of Separation -**
 My spouse and I decided to divorce on (check one):
☐ The date of filing this paper (**Request for Divorce**); or
☐ The date we started living apart: (MM/DD/YYYY): _____
 We were married on (MM/DD/YYYY): _____ in: _____
 (City, County, State or Foreign Country)

⑦ **Orders of Protection and Other Court Orders: Check the box that is true for you.**
☐ There is no Order of Protection.
☐ The Order of Protection has ended (expired).
☐ There is an Order of Protection now in this court. It will stay in effect until the divorce judge changes it.
Attach a copy of the Order of Protection. Write the case number here: _____
☐ There is an Order of Protection now in a different court. It will stay in effect until the other court ends it.
Attach a copy of the Order of Protection. Write the case number here: _____

Restraining Order (check one):
☐ No Restraining Order other than the Statutory Injunction, which applies in every divorce case, has been in effect during this case. The Statutory Injunction tells both spouses not to spend, give away, destroy, waste or use up property from the marriage.
☐ Other (describe): _____

Victims of Domestic Violence
 You do not have to list a home address below. You may list an alternate address instead. For example, you can list a P.O. Box if you have one. The local domestic violence agency can help you.
 Call 1-800-356-6767 or go to www.tcadsv.org

⑧ **Plaintiff's Information**
 Name: _____
 First Name Middle Name Maiden Name Last Name (now)
 Address: _____
 Street Address or P.O. Box City State Zip
 Birthplace _____
 City and State or Foreign Country
 Birth Date (MM/DD/YYYY): _____
 Race: ☐ White ☐ Hispanic ☐ Black ☐ Native American ☐ Other: _____

How many marriages before this one? _____	How long has he/she lived in Tennessee? _____ years _____ months
--	---

Plaintiff's Employer: _____
 Active Member of the Armed Services of the United States? ☐ Yes ☐ No
 Reserve Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No
 Guard Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No
 If the answer is "yes" to any of the questions above, talk to a lawyer. You may not be able to use these forms.

9 Defendant's Information

Name: _____
First Name Middle Name Maiden name Last name (Now)

Address: _____
Street address or P.O. Box City State Zip

Birthplace _____
City and State or Foreign Country

Birth date (MM/DD/YYYY): _____

Race: ☐ White ☐ Hispanic ☐ Black ☐ Native American ☐ Other: _____

How many marriages before this one? _____	How long has he/she lived in Tennessee? _____ years _____ months
--	---

Defendant's Employer: _____

Active Member of the Armed Services of the United States? ☐ Yes ☐ No

Reserve Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

Guard Member of the Armed Services of the United States on Active Duty? ☐ Yes ☐ No

If the answer is "yes" to any of the questions above, talk to a lawyer. You may not be able to use these forms.

10 Financial Information

Real Property (House, Land, or Mobile Homes that are permanently attached to the ground)

My spouse and I:

☐ Do **NOT** own Real Property. If either of you have REAL Property, you cannot use these forms.

Personal Property (such as Cars, Mobile Homes (not permanently attached to the ground), Bank Accounts)

☐ Own personal property and have filed the **Divorce Agreement (Form 5)** that lists how our property is divided.

☐ Do not own Personal Property (**such as** Cars, Mobile Homes, Bank Accounts)

(If **either** of you has a Pension or Retirement Account, except for Social Security, or own a Business, you **cannot** use these forms. Please see a lawyer first.)

Debts – My spouse and I (check one):

☐ Do **NOT** have debts.

☐ Have debts and have filed a **Divorce Agreement (Form 5)** that lists how our debts are divided.

☐ One or both of us has filed for a Bankruptcy and it is still active.

11 Alimony (check one):

- ☐ Neither spouse wants alimony.
- ☐ One of the spouses wants alimony, as agreed to in our Divorce Agreement.

- ⑫ **Name Change** (check below to change a spouse's name back to a name used before this marriage, either a maiden name or previous married name)

☐ Plaintiff requests

First Name

Middle Name

Last Name

☐ Defendant requests

First Name

Middle Name

Last Name

- ⑬ **Court Costs** (check one):

Who will pay the court costs for this divorce?

☐ Spouses will each pay half of the costs.

☐ Plaintiff will pay all costs.

☐ Defendant will pay all costs.

☐ Other agreement: _____.

14 **Divorce Agreement**

Our signed **Divorce Agreement** (Form 5) and Parenting Plan are attached, and we ask the Court to approve them.

I ask the Court to grant this divorce, to make the other orders I have asked for above, and to make any other orders I am entitled to.

Read the text below then sign ONLY in front of a notary

Signed at (City): _____ on (Date): _____
(MM/DD/YYYY)

State of Tennessee, County of _____
(Name of County Where Notarized)

I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:

- As far as I know, the information on this form is true.
- My request for divorce is serious.
- My spouse and I have agreed not to lie about the information in this divorce.
- As far as we know, we meet all the rules to use these forms.

SWORN to and SUBSCRIBED before me, on (date): _____

Signed at (City): _____

State of Tennessee, County of _____

By (Name of Person Filing for Divorce): _____

(Signature of Person Filing for Divorce)

Signature of Notary Public, State of Tennessee

My commission expires: _____
MM/DD/YYYY

(NOTARY’S SEAL)

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Both Parties' Personal Information – To Be Filed Under Seal (Form 2)		File No. _____ (Must Be Completed)
		Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form asks for the personal contact information and Social Security Number of both spouses.

To protect your personal information, follow these steps:

- 1) Fill out this form.
- 2) Put the form in **an unsealed envelope**.
- 3) Write this information on the envelope: Names of both spouses, and Case Number of your case.
- 4) Give it to the clerk when you file your other court forms.
- 5) The court clerk will keep this information secret.

Plaintiff's Information

Name: _____
 First Name Middle Name Maiden Name Last Name (now)

Address: _____
 Street Address

 City State Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

Defendant's Information

Name: _____
 First Name Middle Name Maiden Name Last Name (now)

Address: _____
 Street Address

 City State Zip

Telephone Number: _____

Social Security Number: _____ **Birth date (MM/DD/YYYY):** _____

Birth Place (State or Foreign Country): _____

Children’s Names, Addresses, Birthdates and Social Security Numbers:

Child’s Name	Child’s Address	Child’s Birth Date	Child’s Social Security Number

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Request to Postpone Filing Fees and Order (Uniform Civil Affidavit of Indigency) (Form 3)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

If you cannot afford to pay the filing fees or costs at this time, fill out this form.

And file it with the completed case documents.

Even if the judge approves this form, you may have to pay court costs at the end of the case.

①

Your Information:

Full Name: _____

Address: _____
Street Address City State Zip

Telephone: _____
Home Work Cell

Birth Date: (mm/dd/yyyy): _____

②

Dependents:

List your dependents below.

Dependents can be:

- Your children, and
- Anyone you can claim as a dependent on your taxes.

Name	Age	Relationship	Name	Age	Relationship
1.			4.		
2.			5.		
3.			6.		

③ **Employment:** If you are working now, fill out below. If you are **not** working now, check here: ☐

Employer's Name: _____

Employer's Address and telephone number: _____

Street Address _____ City _____ State _____ Zip _____ Telephone number _____

How much do you earn after taxes are taken out?

\$ _____ Each (Check **One**): ☐ Week ☐ Month ☐ Other: _____

④ **Other Income:** List **any** other income that you get now or expect to get.

Source of Income	How much do you get?	Source of Income	How much do you get?
<input type="checkbox"/> Families First	\$ _____ / month	<input type="checkbox"/> Unemployment	\$ _____ / month
<input type="checkbox"/> Social Security	\$ _____ / month	<input type="checkbox"/> Worker's Comp.	\$ _____ / month
<input type="checkbox"/> Retirement	\$ _____ / month	<input type="checkbox"/> Other*	\$ _____ / month
<input type="checkbox"/> Disability	\$ _____ / month	<input type="checkbox"/> SSI	\$ _____ / month

*Explain Sources of Other Income Here:

Other:

⑤ **Assets:** List all assets that you own separately, with your spouse, or with someone else:

Asset Type:	Fair Market Value (what it's worth now)	- Money still owed	= Balance
1. Car, truck, or other vehicle			\$ _____
2. Other car, truck, or other vehicle			\$ _____
3. House, condominium, land			\$ _____
4. Other house, condominium, land			\$ _____

List all bank/financial institution names below:

Bank name. Do not put account number.	Balance
1. _____	\$ _____
2. _____	\$ _____
Cash	\$ _____
Total:	\$ _____

Other : _____

⑥ Expenses:

	How much each month?		How much each month?
<input type="checkbox"/> Rent/House Payment	\$ _____	<input type="checkbox"/> Gas	\$ _____
<input type="checkbox"/> Phone	\$ _____	<input type="checkbox"/> Child Care	\$ _____
<input type="checkbox"/> Groceries	\$ _____	<input type="checkbox"/> Court-ordered Child Support	\$ _____
<input type="checkbox"/> School Supplies	\$ _____	<input type="checkbox"/> Transportation	\$ _____
<input type="checkbox"/> Electricity	\$ _____	<input type="checkbox"/> Medical/Dental	\$ _____
<input type="checkbox"/> Clothing	\$ _____	<input type="checkbox"/> Other	\$ _____
<input type="checkbox"/> Water	\$ _____	<input type="checkbox"/> Other	\$ _____

⑦ Debts:

Who do you owe?	How much do you owe?	Who do you owe?	How much do you owe?
1. _____	\$ _____	4. _____	\$ _____
2. _____	\$ _____	5. _____	\$ _____
3. _____	\$ _____	6. _____	\$ _____

I declare under penalty of perjury under the laws of the State of Tennessee that:

- The information I have provided is true, correct, and complete.
- I cannot afford to pay the filing fees at this time.

⑧ Perjury means lying on purpose. If I lie on purpose I may have to pay a fine or go to jail.

Sign here: _____ Date: _____

Sworn and subscribed before me this _____ day of _____, 20_____.

 Notary Public or Deputy Clerk

 My Term Expires

IMPORTANT!

Take any proof that supports your case to the hearing, including: witnesses, photos, papers, receipts, etc. The court will not accept written statements from witnesses. The person must go to court in person. If you think a witness may not want to go to court, ask the clerk for subpoena forms. Complete the subpoena as soon as possible so the sheriff can serve them before court.

The court and clerks are not allowed to give you legal advice, even if you don't have a lawyer. This form is a public record. It is not legal advice. The law may change and it is best to consult with a lawyer if possible.

Do Not Fill Out This Section Below. The Judge Will Fill This Section Out At Court.

- ☐ The court **denies** this Request because (judge will check all that apply):
 - ☐ The applicant did not prove s/he cannot afford to pay costs associated with this case at this time.
 - ☐ The applicant did not go to the court hearing concerning this Form. This Request is dismissed.
 - ☐ The applicant must pay court costs of: \$
- ☐ The court **approves** this Request and the applicant may file without paying the filing fees or costs at this time.



Judge's signature: _____

Date: _____

NOTICE: After reading this paper, the judge may decide you must pay the fees up front. If that happens, you have the right to a hearing before the judge. An appeal gives you a chance to tell your side. You may be able to appeal your case to a Circuit Court. If so, you have a right to a hearing before the Circuit Court Judge.

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Health Insurance Notice (Form 4)		File No. _____ (Must Be Completed)
		Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

You must:

- Fill out this form completely, **OR** ask the person in charge of employee benefits where you work to fill it out.
- File the copy with the Court.
- Mail a copy to your spouse by certified mail. Keep a copy of this form for your records.

Important! Your spouse must receive this notice at least 30 days before the insurance coverage ends. Most courts require you to send this to your spouse before you can get a hearing date.

To (Spouse's Name): _____

(Spouse's Address): _____
Street address or P.O. Box City State Zip

From (Your Name): _____

(Your Address): _____
Street Address or P.O. Box City State Zip

If you do NOT have health insurance, check here. ☐ Then fill out the Certificate of Service section below. Mail a copy of this paper to your spouse. File this paper with the court clerk's office.

If you HAVE health insurance that covers your spouse now, check here. ☐ Then fill out the information about your health insurance:

Health Insurance Company: _____ Policy Number: _____

(Employee Benefits Contact Person): _____ (Name/Phone #/Street Address/City/State/Zip)

Check one:

- ☐ This policy has COBRA. That means your spouse can keep the insurance after the divorce. BUT s/he must apply by the deadline and pay the monthly premiums and any fees. To learn more, ask the employee benefits person listed above.
- ☐ This is a group insurance policy. The dependent Your spouse may might be able to continue coverage under TCA § 56-7-2312(d)(1). To learn more, ask the employee benefits person listed above. Your spouse may also get insurance somewhere else.
- ☐ This policy does not offer COBRA. That means your spouse will lose this insurance after the divorce. Your spouse must get health insurance somewhere else.
- ☐ My spouse is not covered by my policy.

Certificate of Service:

I hereby certify that a true and exact copy of this **Health Insurance Notice** was mailed to my insured spouse on (Date) _____, (MM/DD/YYYY) I sent it to the address listed above by certified mail.

Sign Here: ▶ _____ Date (MM/DD/YYYY) _____

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Divorce Agreement (Marital Dissolution Agreement) (Form 5)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

This form explains how you and your spouse will divide your property and debts.
You must file this form with your **Request for Divorce, Form 1**.

Warning! Divorce cases can be hard.
It is always good to talk with a lawyer, if possible.
For information on how to get legal help, call 1-844-Help4TN (1-844-435-7486).

Check “yes” or “no” for each question below.

- Does one or more of the children born while you were married have a different birth father?
☐ Yes ☐ No
- Does somebody else have a court order giving them custody or visitation of the children?
☐ Yes ☐ No
- Is a spouse pregnant?
☐ Yes ☐ No
- Does either spouse have a pension or retirement plan? This includes any retirement except Social Security. If you have any questions, see a lawyer.
☐ Yes ☐ No
- Does either spouse own a business?
☐ Yes ☐ No
- Does either spouse have real property (real property is houses, land, mobile homes that are permanently attached to the ground, condominiums, and cooperatives).
☐ Yes ☐ No

If you checked “Yes” for any of the questions above, you cannot use these forms. Please talk to a lawyer.

Do you and your spouse agree on everything in the Parenting Plan?
☐ Yes ☐ No

If you checked “No” for the question above, you cannot use these forms. Please talk to a lawyer.

We promise the Court that: (Check Yes or No for each box)

1. We are the Plaintiff and Defendant listed above. We are filing a **Request for Divorce** in the county and court listed above. We can no longer get along as spouses. We understand our marriage rights and duties. We want to get an agreed divorce.

☐ Yes

☐ No

2. We agree on everything in the **Request for Divorce**. The **Request for Divorce** does not have to be served, and there is no need to file an **Answer**.

☐ Yes

☐ No

3. Each of us has read this whole **Divorce Agreement**. We agree it is fair. We agree that each of us has told the other all information on assets and/or debts that we each have. We understand that the Divorce Agreement will become part of our **Final Divorce Order**.

☐ Yes

☐ No

4. My spouse and I have children together who are under 18, in high school or disabled.

☐ Yes

☐ No

Children together means children you had together that were born before your marriage AND all children born or adopted during the marriage. This includes all children either spouse had during the marriage. The Court can decide issues about each child under age 18, in high school, or disabled.

5. We have entered into a Permanent Parenting Plan. It is attached and part of this Marital Dissolution Agreement. We agree the Plan is in the best interest of the children. We understand the court will make the final decision about parenting issues.

☐ Yes

☐ No

6. No one made us sign this Agreement. We will sign any other papers needed to carry out this Agreement.

☐ Yes

☐ No

7. Neither spouse is pregnant.

☐ Yes

☐ No

8. We agree that this Request for Divorce will take effect only if the Court finds it fairly divides our assets and debts and fully provides for the care and support of our children and if the Court grants a divorce.

☐ Yes

☐ No

If you checked "No" on any box, you **cannot** use any of these forms to file for a divorce. If you have any questions about the Request for Divorce, or about what might happen if either of you change your mind, you need to speak with a lawyer before signing it.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Plaintiff's Personal Property

The **Plaintiff** will own the following property:

a. Vehicles (cars, motorcycles, trucks, boats, etc.)

Vehicle 1	Year	Make	Model	VIN #
Vehicle 2	Year	Make	Model	VIN #
Vehicle 3	Year	Make	Model	VIN #

b. Other personal property like bank accounts, cash, furniture, jewelry, trailers, etc., **not** houses or land!

Type of Account	Bank or Financial Institution	Account Number (Last four Digits)	Account Balance
Check Account			
Savings Account			
Money Market Account			
Other Account			
Other Account			

Describe other personal property: _____

c. ☐ All personal property the Plaintiff has now is his/hers.

If you need more lines, copy this page. Make sure it is included when you file this paper.

Defendant's Personal Property

The **Defendant** will own the following property:

a. Vehicles (cars, motorcycles, trucks, boats, etc.)

	Year	Make	Model	VIN #
Vehicle 1				
	Year	Make	Model	VIN #
Vehicle 2				
	Year	Make	Model	VIN #
Vehicle 3				

b. Other personal property like bank accounts, cash, furniture, jewelry, trailers, etc., **not** houses or land!

Type of Account	Bank or Financial Institution	Account Number (Last four Digits)	Account Balance
Check Account			
Savings Account			
Money Market Account			
Other Account			
Other Account			

Describe other personal property: _____

c. ☐ All personal property the Defendant has now is his/hers.

If you need more lines, copy this page. Make sure it is included when you file this paper.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Debt

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does **not** protect you against creditors. They may try to collect from you, even if your spouse is supposed to pay the debt. It may be best to cancel, close, or freeze any accounts you have together.

Plaintiff will pay all debts he or she has made since separating from the other spouse.
He or she will also pay for the following debts:

List all loans, including car notes, credit card, cash advance debts	Name of Creditor (person or company you owe)	Account Number (last four digits)	Name on the account	Amount still owed
1.				\$
2.				\$
3.				\$
4.				\$

If you need more lines, copy this page. Make sure it is included when you file this paper.

Are any of these debts listed above joint debts? It is a joint debt if both spouses signed a Note or legal paper to pay the debt.

The Plaintiff will do his or her best to refinance or pay off these joint debts.

The Plaintiff has (choose one): ☐ 90 days 180 days☐ ☐ 1 year from the date the Court approves this Agreement to do so or otherwise take the other spouse's name off of these joint debts.

What if the Plaintiff does not refinance or pay off the joint debts in that time? Then the other spouse may take him or her back to Court. The Court may order the Plaintiff's assets sold to pay off the joint debt(s).

Plaintiff: Initials _____ Date Signed: _____ Defendant: Initials _____ Date Signed: _____

Defendant will pay all debts he or she has made since separating from the other spouse. He or she will pay for the following debts:

List all loans, including car notes, credit card, cash advance debts	Name of Creditor (person or company you owe)	Account Number (last four digits)	Name on the account	Amount still owed
1.				\$
2.				\$
3.				\$
4.				\$

If you need more lines, copy this page. Make sure it is included when you file this paper.

Are any of these debts listed above joint debts? It is a joint debt if both spouses signed a Note or legal paper to pay the debt.

The Defendant will do his or her best to refinance or pay off these joint debts.

The Defendant has (choose one): ☐ 90 days ☐ 180 days ☐ 1 year from the date the Court approves this Agreement to do so or otherwise take the other spouse's name off of these joint debts.

What if the Defendant does not refinance or pay off the joint debts in that time? Then the other spouse may take him or her back to Court. The Court may order the Defendant's assets sold to pay off the joint debt(s).

We Both Agree on How to Divide the Debts

(Hold Harmless Provision)

Both the spouses agree to divide their debts as listed above. The Plaintiff agrees to pay all the debts listed under "Plaintiff's Debts." The Defendant agrees to pay all the debts listed under "Defendant's Debts." The Plaintiff will not try to make the Defendant pay his/her debts. The Defendant will not try to make the Plaintiff pay his/her debts. The Plaintiff and Defendant understand that creditors can try to collect from both of them. A creditor may get one spouse to pay the other spouse's debt, even after the divorce is final. If that happens, the spouse who has agreed to pay the debt will pay the other spouse back. He or she will pay back any payments and reasonable lawyer's fees the spouse paid. He or she will pay back any costs of trying to stop a creditor from collecting the debt.

Plaintiff: Initials _____ Date Signed: _____

Defendant: Initials _____ Date Signed: _____

Alimony (check one):

Warning! This section can be very hard. Please talk with a lawyer if you need help with this section.

Alimony can only be changed if there are significant life changes. Sometimes it cannot be changed at all. You have to get a court order to change alimony.

If you want alimony but do not agree on all the sections below, you cannot use this form.

You must fill out each section.

☐ Neither spouse wants alimony

OR

1. The ☐ Plaintiff ☐ Defendant agrees to pay (amount): \$ _____.

2. We agree that the alimony (check **all** the blocks that are true for your agreement):

☐ Will be paid until this date _____

☐ Will end when the one who gets the alimony dies or gets married again

☐ Will end when the one who gets the alimony finishes school, or on _____, whichever date comes first.

☐ Or if this happens _____

☐ Will not be modified.

The court can modify the alimony due to significant changes in our lives, or if the person receiving alimony lives with another person, with or without a romantic relationship.

3. We agree that the alimony will be paid (you must check **one**):

☐ Weekly

☐ Monthly

☐ Other: _____

☐ Lump sum paid all at one time

Important: Both of us understand alimony may change our federal taxes. Unless we specifically agree otherwise, the payor will be able to deduct it on his/her tax return and the person receiving it will have to declare it as income. Our initials at the bottom of this page show we understand this. We agree we are responsible for knowing, understanding and accepting this.

Plaintiff Initials _____ Date Signed: _____ Defendant Initials _____ Date Signed: _____

Name Change

Check below to change a spouse's name back to a name used before this marriage (maiden name or previous married name). A government agency or other business may need proof of this name change. If so, give them a filed copy of this form.

<input type="checkbox"/> Plaintiff			
	First	Middle	Last
<input type="checkbox"/> Defendant			
	First	Middle	Last

Court Costs will be paid by (check one)

☐ Plaintiff
☐ Defendant
☐ Plaintiff and Defendant will each pay half
☐ Other (explain): _____

Waiver of Service

By signing this Agreement, the Plaintiff and Defendant agree they do not have to serve each other with divorce papers. This form is only good for 180 days after the last spouse signs it. Your final hearing must be within those 180 days. If the 180 days has passed, you will have to fill out, sign, and file this form again. The spouses understand that they do not have to file an Answer to a Complaint for Divorce.

Entire Agreement

This document says everything the Plaintiff and Defendant agreed to in this divorce. If they agreed with each other about anything else, the court cannot make them do it.

Warning - Changes (Modification)

This form is a legal contract. It is very important this contract is completely filled out. Make sure that you are OK with everything that is in it before you sign it. Speak to a lawyer before signing or if you have any questions.

Plaintiff: Initials _____ Date Signed: _____ Defendant: Initials _____ Date Signed: _____

<p>Read below, but only sign in front of a notary. You may sign at a different time than your spouse, if you want.</p> <p>Plaintiff</p> <p>I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:</p> <ul style="list-style-type: none">• As far as I know, the information on this form is true.• I have told my spouse about all property and all debts that I know about. I have not kept any property or debts a secret from my spouse before I signed this agreement.• This is everything we have agreed to.• Any Agreements we have that are not listed above are no longer any good. <p>I understand that even if one of us changes his or her mind after we both sign it, the Court may still enforce the Request for Divorce.</p> <p>SWORN to and SUBSCRIBED before me, on</p> <p>(date): <u>MM/DD/YYYY</u></p> <p>Signed at (city): _____</p> <p>State of Tennessee, County of _____</p> <p>By (Plaintiff):</p> <p>_____</p> <p>Signature of Notary Public, State of Tennessee My commission expires on: _____ <u>MM/DD/YYYY</u></p> <p>(Notary's seal)</p>	<p>Read below, but only sign in front of a notary. You may sign at a different time than your spouse, if you want.</p> <p>Defendant</p> <p>I know that Tennessee has laws against lying on purpose (perjury). I swear and affirm that:</p> <ul style="list-style-type: none">• As far as I know, the information on this form is true.• I have revealed to told my spouse about all property all and debts that I know about. I have not kept any property or debts a secret from my spouse before I signed this agreement.• This is everything we have agreed to.• Any Agreements we have that are not listed above are no longer any good. <p>I understand that even if one of us changes his or her mind after we both sign it, the Court may still enforce the Request for Divorce.</p> <p>SWORN to and SUBSCRIBED before me, on</p> <p>(date): <u>MM/DD/YYYY</u></p> <p>Signed at (city): _____</p> <p>State of Tennessee, County of _____</p> <p>By (Defendant):</p> <p>_____</p> <p>Signature of Notary Public, State of Tennessee My commission expires on: _____ <u>MM/DD/YYYY</u></p> <p>(Notary's seal)</p>
--	--

By signing this Agreement, the spouses agree not to serve each other with divorce papers. They will give this Agreement to a court within 180 days. The 180 days starts when both of them have signed the Agreement. They agree that they do not need to file an answer to the divorce complaint.

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Final Decree of Divorce (Marital Dissolution Agreement and Permanent Parenting Plan Order) (Form 6)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce)		
Defendant _____ (Name: First, Middle, Last of the other spouse)		

If you are ready to finalize your divorce, you must fill out this form and file it with the court clerk. Only the spouse asking for the divorce must sign it, and that spouse **must go** to the court hearing. **BUT**, it is a good idea for **both** spouses to go in case the court has questions. Ask the court clerk for the rules in your county. The Judge does not have to sign this Order if he/she thinks your Divorce Agreement is not fair.

Take a copy of this form with you to your court hearing. It is best to bring all copies of documents you have filed in this case and take:

- **Divorce Agreement**, Form 5, signed by both spouses and notarized if not filed with Request for Divorce
- **Divorce Certificate** - you must get the official state form from the clerk and have it filled out before you go into court.
- **Title IV-D Child Support Information Form** – you only need this form if one of the spouses or children receive SNAP Food Stamps, Families First (AFDC) and/or TennCare from the State.
- **Permanent Parenting Plan, including Child Support Worksheet**

Court Hearing and Findings:

On (Date) _____, there was a court hearing at the court and county listed above
 (MM/DD/YYYY)
 before : _____
 (Judge's Name)

Parties at the hearing:

☐ **Plaintiff (Spouse filing the divorce):**

Street or P.O. Box	City	State	Zip	Phone #
--------------------	------	-------	-----	---------

☐ **Defendant (The other spouse):**

Street or P.O. Box	City	State	Zip	Phone #
--------------------	------	-------	-----	---------

The Court affirmatively finds as follows:

- ① The spouses have sworn and affirmed they have children together who are under 18, in high school or disabled and neither spouse is pregnant. Children together means children they had together before the marriage and all children born or adopted during their marriage.
- ② The spouses have both signed under penalty of perjury a proposed permanent Parenting Plan that includes all children the parties have together.
- ③ The spouses have made adequate and sufficient provision for the custody and support of all of their children and the court finds the proposed permanent Parenting Plan, including the parenting schedule, is in the children's best interest.
- ④ The spouses have both signed under penalty of perjury a Divorce Agreement (Marital Dissolution Agreement). That Agreement has disclosed fully the spouses' assets and liabilities and the court finds it equitably settles any and all property rights between them.

⑤ Alimony

- ☐ Neither spouse wants alimony OR
- ☐ The (check one): ☐ Plaintiff ☐ Defendant agrees to pay (amount): _____
each ☐ Week ☐ Month ☐ Other _____
- ☐ The alimony will end on (date): _____ OR
- ☐ The alimony will end when this happens: _____

- ⑥ The spouses are now divorced based on irreconcilable differences and are restored to the rights and privileges of unmarried persons. The Permanent Parenting Plan and Divorce Agreement (Marital Dissolution Agreement) are now a part of this Final Decree of Divorce.

⑦ Orders of Protection (check one):

- ☐ Neither party has a current Protective Order.
- ☐ The Court ends the current Protective Order.
- ☐ The Court continues the current Protective Order from this Court until (MM/DD/YYYY): _____
Attach a Copy of the Order of Protection. Write the Case Number here: _____
- ☐ The parties have an Order of Protection in a different court. This Final Divorce Order does not change that Order of Protection.
Attach a Copy of the Order of Protection. Write the Case Number here: _____

Restraining Order (check one):

- ☐ Neither party has a current restraining order or wants a restraining order.
- ☐ The Court orders both parties not to hurt or threaten the other.
- ☐ The Court further orders that they cannot contact each other after the divorce is final. They also cannot send messages to each other through other people.

⑧ **Name Change** (check one):

- ☐ This Order does not change either party's name.
- ☐ This Order changes the Plaintiff's name to:

First Name	Middle Name	Last Name
------------	-------------	-----------

- ☐ This Order changes the Defendant's name to:

First Name	Middle Name	Last Name
------------	-------------	-----------

Important! You need to change your name on your driver's license or other records. You may need a certified copy of this Order to do that.

⑨ **Lawyers' fees** (check one):

- ☐ Neither side has a lawyer.
- ☐ The Plaintiff will pay for his/her lawyer's fees. The Defendant will pay for his/her lawyer's fees.
- ☐ Other (explain):

⑩ **Court Costs** will be paid as follows (check one):

- ☐ The Plaintiff and Defendant will each pay half of the court costs.
- ☐ Plaintiff will pay all costs.
- ☐ Defendant will pay all costs.
- ☐ Other agreement: _____

⑪ **Other Orders**

Notice: The Final Decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts. T.C.A. §36-4-134.

What this means: This Order does not protect you against creditors. They may try to collect from you, even if your spouse is supposed to pay the debt. It may be best to cancel, close, or freeze any accounts you have together.

This Order is made on Date (MM/DD/YYYY): _____ by:

Judge's signature

This Order is not final until 30 days after the Judge signs it. During those 30 days, you may have questions about remarrying or buying property. If so, talk to a lawyer.

Presented by: _____
 Person Getting the Order

Plaintiff's Signature _____

Date (MM/DD/YYYY): _____ Plaintiff's Phone Number: _____

Defendant's Signature _____

Date: (MM/DD/YYYY) _____ Defendant's Phone Number: _____

If your spouse did not go to this hearing, you must mail him/her a copy of this signed Final Divorce Order. Then fill out the part below.

Certificate of Service:

I swear and affirm that a copy of the Final Divorce Order was given to my spouse. It was delivered in person or sent by first-class U.S. Mail to this address:

I did so on the _____ day of _____ 20_____.

Spouse who mails it signs here:

Street Address:

City, State, Zip

Phone number:

Attached:

- ☐ **Divorce Agreement** – Marital Dissolution Agreement (if not already submitted)
- ☐ **Divorce Certificate** (if not already submitted)
- ☐ **Parenting Plan including Child Support Worksheet** (if not already submitted)
- ☐ **Title IV-D Form** (if not already submitted)
- ☐ **Other:** _____

State of Tennessee	Court _____ (Must be completed)	County _____ (Must be completed)
Restraining Order for Divorcing Spouses (Statutory Injunction) (Form 7)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff: _____ (Name: First, Middle, Last of spouse filing this paper)		
Defendant: _____ (Name: First, Middle, Last of the other spouse)		

Both spouses must obey all state law below until the divorce is granted. If you do not obey them, you may be held in contempt of court.

Behavior You must not:

- Bother, harass, threaten, assault or abuse your spouse.
- Talk about your spouse in a bad way to or in front of your children, your spouse's children, or your spouse's employer.
- Hide, destroy, or spoil any evidence stored on a computer hard drive or memory storage device.

Property & Money

- **DO NOT** do anything to any property that belongs to both of you that makes it worth less money. This means you can't sell, spend, destroy, harm, transfer, assign, borrow against, hide, or do anything with it. This is true unless the court orders it or your spouse agrees.
- You may use your income for expenses that:
 - Let you keep living as well as you did when married,
 - Pay the usual costs for your business the same way you always do
- You must keep records of all expenses. If he/she asks, you must give your spouse copies of those records.

Children

You must not move the children:

- Out of Tennessee, or
- More than 50 miles from the home where you lived while married. This is true unless the court orders it or your spouse agrees.

Important! Do you have a good reason to be afraid that your spouse might hurt you or your children? Then you may go with your children to a safe place. Later, the other spouse may ask the court for an emergency hearing and new Orders. The court can hold the hearing by phone, if needed. **Important!** If you want to move with the children out of Tennessee or more than 50 miles away after the divorce, Tennessee's relocation law applies. You must speak with a lawyer.

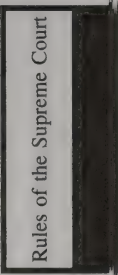
Insurance Unless the court orders it or your spouse agrees, you must not:

- Change, cancel, or transfer **any** insurance policy that covers either spouse or the children.
- Change, cancel, or transfer **any** insurance policy that names either spouse or the children as beneficiary.
- Stop paying for **any** insurance policy premium that covers either spouse or the children.

You **must** follow this Order unless the court changes or ends it, OR your case is final or dismissed. OR you and your spouse make an agreement. Either spouse may ask the court to change or cancel this Order.

Plaintiff's Signature

Defendant's Signature



State of Tennessee Court: _____
(Must Be Completed)

County: _____
(Must Be Completed)

**Notice of Hearing to Approve Irreconcilable
Differences Divorce
(Form 8)**

File No.: _____
(Must Be Completed)

Division/Part: _____
(Large Counties Only)

Irreconcilable differences mean no one is to blame for the
divorce. You two just cannot work out your problems.

Plaintiff: _____
(Name: First, Middle, Last of spouse filing the divorce)

Defendant _____
(Name: First, Middle, Last of the other spouse)

This case is set for hearing at the court above on: _____
(Month/Day) , 20 _____ at _____
☐ a.m.
☐ p.m.

Location: Room # _____ (Street) _____ (City, State, Zip)
Presented by: _____

Person asking for the Hearing to approve the irreconcilable differences divorce
Certificate of Service

I swear and affirm that a copy of this Notice was given to my spouse. It was delivered in person or sent by
first-class U.S. Mail to this address:

I did so on the _____ day of _____ 20_____.

Person asking for the Hearing:

Street Address:

City, State, Zip

Phone number:
XXX 2016

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Order of Wage Assignment for Child Support (Form 9)		File No. _____ (Must Be Completed) Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of spouse filing the divorce)		
Defendant _____ (Name: First, Middle, Last of the other spouse)		

This cause came to be heard on the _____ day of _____, _____. It is hereby,

Ordered, adjudged and decreed that:

① ☐ Plaintiff ☐ Defendant shall pay the other parent \$ _____ a month for current support and \$ _____ a month for back child support.

List all the children this payment supports. Add a page if you need more space.

Name (first, middle, last) _____

Date of birth: _____

Name (first, middle, last) _____

Date of birth: _____

Name (first, middle, last) _____

Date of birth: _____

② This Order is a wage assignment order. Wage assignment means the employer takes the money out of each paycheck. The employer will take out \$ _____ per month for current child support plus an additional \$ _____ per month for back child support from the ☐ Plaintiff's ☐ Defendant's paycheck. The back child support will be paid until \$ _____ in total back child support has been paid in full.

③ The Clerk shall give notice of this assignment to the ☐ Plaintiff's ☐ Defendant's employer:
Employer's name and address _____

Notice shall be given by certified mail. The employer shall withhold \$ _____ per month from
the ☐ Plaintiff's ☐ Defendant's paycheck and pay it to:

The Central Child Support Receiving Unit
P.O. Box 305200
Nashville, TN 37229

The payment shall indicate:

Case Number _____

Court Identifier/Tennessee Child Support Enforcement System (TCSES) Number _____

④ Payment shall be made by the Central Child Support Receiving Unit to:
Name of parent receiving support (first, last, middle) _____
Address: _____

Telephone: _____ Fax: _____ Email: _____

⑤ ☐ Plaintiff ☐ Defendant shall pay the sum of \$ _____ per month directly to the other
parent until such time the child support is deducted from his wages.

Signed this _____ day of _____, 20_____.

JUDGE

Presented by:

Plaintiff

Address

Telephone Fax

Email

Defendant

Address

Telephone Fax

Email

State of Tennessee	Court _____ (Must Be Completed)	County _____ (Must Be Completed)
Title IV-D Child Support Information (Form 10)		File No. _____ (Must Be Completed)
		Division/Part _____ (Large Counties Only)
Plaintiff _____ (Name: First, Middle, Last of Spouse Filing the Divorce)		
Defendant _____ (Name: First, Middle, Last of the Other Spouse)		

Plaintiff:

Name: _____

First Name	Middle Name	Last Name
Address: _____		
Street Address	City	State
Zip		
Mailing Address, if different: _____		
Street Address	City	State
Zip		
Phone: () _____	Birth Date: _____	Birth Place _____
	(MM/DD/YYYY)	City
		State
Driver's License Number: _____	Issuing State of Driver's License: _____	
Employer's Name: _____	Employer's Phone: () _____	
Gross income before anything is taken out: _____ each <input type="checkbox"/> week <input type="checkbox"/> 2 weeks <input type="checkbox"/> month		
Does he/she get health insurance at work? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Does he/she have to pay for part of it? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, how much does he/she have to pay for it? \$ _____ each <input type="checkbox"/> week <input type="checkbox"/> 2 weeks <input type="checkbox"/> month		
Name of health insurance company: _____		
Address of health insurance company: _____		

Defendant:

Name: _____
 First Name _____ Middle Name _____ Last Name _____

Address: _____
 Street Address _____ City _____ State _____ Zip _____

Mailing Address, if different: _____
 Street Address _____ City _____ State _____ Zip _____

Phone: (____) _____ Birth Date: _____ Birth Place _____
 (MM/DD/YYYY) _____ City _____ State _____

Driver's License Number: _____ Issuing State of Driver's License: _____

Employer's Name: _____ Employer's Phone: (____) _____

Gross income before anything is taken out: _____ each ☐ week ☐ 2 weeks ☐ month

Does he/she get health insurance at work? ☐ Yes ☐ No

Does he/she have to pay for part of it? ☐ Yes ☐ No

If yes, how much does he/she have to pay for it? \$ _____ each ☐ week ☐ 2 weeks ☐ month

Name of health insurance company: _____

Address of health insurance company: _____

Children:

- 1. First, middle, last name: _____
Date of birth: _____
Address where he/she lives: _____
City _____ State: _____ Zip code: _____

- 2. First, middle, last name: _____
Date of birth: _____
Address where he/she lives: _____
City _____ State: _____ Zip code: _____

- 3. First, middle, last name: _____
Date of birth: _____
Address where he/she lives: _____
City _____ State: _____ Zip code: _____

- 4. First, middle, last name: _____
Date of birth: _____
Address where he/she lives: _____
City _____ State: _____ Zip code: _____

Important! If child support payments are made to the Central Child Support Receipting Unit, remember:

Send a payment coupon from the Department of Human Services with each payment. Don't have a coupon? Then this information **must** go with each payment:

- 1. Name and social security number of the parent who must pay child support.
- 2. Court Identifier number _____
- 3. Docket number _____

If you don't send this information with the payment, you may have to pay a penalty (TCA §36-5-120).

Are you behind on child support payments (in arrears)? Then the payment that is set is the least you can pay. Your children's other parent can still try and collect by taking your income tax refund. Or he/she can get a lien to get the money if you sell any property. Or he/she can ask the court to take your property to pay what you owe. If this happens, will it count toward what you owe for child support? It **ONLY** counts if it is paid to the Central Child Support Receipting Unit.

Is child support being taken out of your wages? Until your employer starts taking the payments out of your wages, you must make payments. Make payments directly to the Central Child Support Receipting Unit. What if your employer is not taking the full payment you owe out of your wages? Then you must pay the rest of the payment directly to the Central Child Support Receipting Unit.

Warning! If any of the information on this paper changes or is wrong, you must let the court know right away. If you don't, a default judgment may be entered against you. The default judgment will be sent to the most recent residential or employer address on file with the court or the Title IV-D agency. A default judgment means you are ordered to pay all the child support you owe at once. If any of the information changes, both the Plaintiff and Defendant must tell the court and the IV-D Child Support Office within 10 days. Report the changes to the Clerk of the _____ Court, _____, and the _____.

Index to Rules of the Supreme Court of the State of Tennessee

A

ABORTION.

Waiver of parental consent for abortions by minors, SupCt 24.

ACCESS TO JUSTICE COMMISSION.

Duties, SupCt 50 §2.

Established, SupCt 50 §1.

ACCOUNTS.

Attorneys at law.

Rules of professional conduct.

Safekeeping property, SupCt 8 ProfCond 1.15.

ADMINISTRATIVE OFFICE OF THE COURTS.

Murder.

First degree murder.

Trial judge's report.

Electronic submission system,
establishment and implementation,
SupCt 12.

ADMONTION.

Attorney discipline.

Private informal admonition.

Division of disciplinary cases, SupCt 9 §13.

Types of discipline, SupCt 9 §12.

ADOPTION.

Guardian ad litem.

Attorney representation of indigent parties.

Advice by court to party without counsel
as to right to be represented, SupCt
13.

Fees.

Presumption that fee equally divided
between parties, SupCt 13.

ADVERTISING.

Alternative dispute resolution.

Professional conduct for rule 31 mediators
and rule 31A neutrals, standards,
SupCt 31 Appx A §12.

Attorneys at law.

Intermediary organizations, SupCt 44.

Rules of professional conduct, SupCt 8
ProfCond 7.6.

Rules of professional conduct, SupCt 8
ProfCond 7.2.

Cooperatives for lawyer advertising and
other intermediary organizations,
SupCt 8 ProfCond 7.6.

Solicitation of employment directed to
specifically identified recipients,
SupCt 8 ProfCond 7.3.

AFFIDAVITS.

Indigent persons.

Uniform civil affidavit of indigency, SupCt
29.

AGE.

Attorney discipline.

Tennessee lawyer assistance program
(TLAP), SupCt 9 §36.

ALCOHOL AND DRUG ABUSE.

Attorney discipline.

Tennessee lawyer assistance program
(TLAP), SupCt 7 §36.

Attorneys at law.

Conditional admission of rehabilitating
applicants, SupCt 7 §10.05.

Judges.

Code of judicial conduct.

Disability or impairment by alcohol, other
substances or mental, etc, conditions,
SupCt 10 JudCondCanon 2 (2.14).

ALTERNATIVE DISPUTE RESOLUTION.

ADRC.

Defined, SupCt 31 §2.

Duties, SupCt 31 §16.

Programs manager.

Duties, SupCt 31 §16.

Advertising.

Professional conduct for rule 31 mediators
and rule 31A neutrals, standards,
SupCt 31 Appx A §12.

Alternative dispute resolution commission.

Defined, SupCt 31 §2.

Duties, SupCt 31 §16.

Program manager.

Duties, SupCt 31 §16.

Applicability of rule, SupCt 31 §1.

Arbitration.

Non-binding arbitration.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §17.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See
within this heading, "Rule 31A ADR
Proceedings."

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §13.

Attorneys.

Participation.

Rule 31A ADR proceedings, SupCt 31A
§6.

Participation of attorneys, SupCt 31 §6.

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

ALTERNATIVE DISPUTE RESOLUTION

—Cont'd

Baccalaureate degrees.

Defined, SupCt 31 §2.

Case evaluation.

Applicability of rules, SupCt 31A §§1, 18.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See within this heading, "Rule 31A ADR Proceedings."

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §15.

Civil cases.

Rule 31 mediators.

Qualifications and training, SupCt 31 §14.

Clerks of court.

Retirement or resignation pending.

Rule 31 mediators, restrictions on listing as, SupCt 31 §14.

Collaborative family law.

Generally, SupCt 53 §§1 to 22.

See COLLABORATIVE FAMILY LAW.

Other alternative dispute resolution.

Permitted, SupCt 53 §21.

Confidentiality.

Conduct or statements made during proceedings, SupCt 31 §7.

Rule 31A ADR proceedings, SupCt 31A §7.

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §7.

Consent of parties.

Initiation, SupCt 31 §3.

Costs, SupCt 31 §8.

Rule 31A ADR proceedings, SupCt 31A §8.

Court.

Defined, SupCt 31 §2, SupCt 31A §2.

Days.

Defined, SupCt 31 §2, SupCt 31A §2.

Definitions, SupCt 31 §2, SupCt 31A §2.**Dispute resolution neutrals.**

Attorney as dispute resolution neutral.

Rules of professional conduct, SupCt 8 ProfCond 2.4.

Domestic violence.

Rule 31 mediators.

Family cases.

Designation as specially trained in domestic violence issues, SupCt 31 §14.

Eligible civil action.

Defined, SupCt 31 §2, SupCt 31A §2.

Evidence.

Conduct or statements made during proceedings.

Rule 31A ADR proceedings, SupCt 31A §7.

Inadmissible evidence, SupCt 31 §7.

Family cases.

Collaborative family law, SupCt 53 §§1 to 22.

See COLLABORATIVE FAMILY LAW.

ALTERNATIVE DISPUTE RESOLUTION

—Cont'd

Family cases —Cont'd

Rule 31 mediators.

Qualifications and training of neutrals, SupCt 31 §14.

Graduate degrees.

Defined, SupCt 31 §2.

Initiation, SupCt 31 §3.

Rule 31A ADR proceedings, SupCt 31A §3.

Judges.

Code of judicial conduct.

Conflicts of interest.

Arbitrator, mediator, neutral, etc, service as, SupCt 10

JudCondCanon 3 (3.9).

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31 §14.

Retirement or resignation pending.

Rule 31 mediators, restrictions on full-time judicial officer being listed as, SupCt 31 §14.

Judicial officers.

Defined, SupCt 31 §2, SupCt 31A §2.

Judicial settlement conferences.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §16.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See within this heading, "Rule 31A ADR Proceedings."

Masters.

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31 §14.

Mediation.

Court-ordered mediation, SupCt 31 §2.

Defined, SupCt 31 §2.

Mini-trial.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §19.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See within this heading, "Rule 31A ADR Proceedings."

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §14.

Non-binding arbitration.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §17.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See within this heading, "Rule 31A ADR Proceedings."

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §13.

Order of reference ordering parties to participate.

Definition of order of reference, SupCt 31 §2, SupCt 31A §2.

Initiation of proceedings, SupCt 31 §3.

Rule 31A ADR proceedings, SupCt 31A §3.

ALTERNATIVE DISPUTE RESOLUTION

—Cont'd

Parenting plans.

Divorcing parent education and mediation fund, SupCt 38 §2.

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31 §14.

Professional conduct for rule 31

mediators and rule 31A neutrals, standards, SupCt 31 Appx A §§1 to 14.

Advancement of profession, SupCt 31 Appx A §14.

Advertising, SupCt 31 Appx A §12.

Advice by neutrals.

Limitations, SupCt 31 Appx A §8.

Concluding proceedings, SupCt 31 Appx A §10.

Confidentiality of information, SupCt 31 Appx A §7.

Conflicts of interest, SupCt 31 Appx A §§2, 6.

Continuing education, SupCt 31 Appx A §11.

Courts.

Responsibilities to courts, SupCt 31 Appx A §3.

Fees, SupCt 31 Appx A §9.

General standards, SupCt 31 Appx A §2.

Impartiality, SupCt 31 Appx A §6.

Principles of dispute resolution, SupCt 31 Appx A §1.

Pro bono service, SupCt 31 Appx A §14.

Process of dispute resolution, SupCt 31 Appx A §4.

Purposes of provisions, SupCt 31 Appx A §1.

Relationships with neutrals and other professionals, SupCt 31 Appx A §13.

Responsibilities to courts, SupCt 31 Appx A §3.

Scope of provisions, SupCt 31 Appx A §1.

Self-determination.

Roles of neutrals and parties, SupCt 31 Appx A §5.

Training, SupCt 31 Appx A §11.

Referees.

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31 §14.

Reports, SupCt 31 §5.

Rule 31A neutrals.

Reports upon conclusion of proceedings, SupCt 31A §5.

Rule 31A ADR proceedings.

Applicability of rules, SupCt 31A §1.

Attorney participation with clients, SupCt 31A §6.

Costs, SupCt 31A §8.

Defined, SupCt 31A §2.

Evidence.

Confidential evidence, SupCt 31A §7.

Inadmissible evidence, SupCt 31A §7.

Initiation, SupCt 31A §3.

Orders of reference, SupCt 31A §3.

ALTERNATIVE DISPUTE RESOLUTION

—Cont'd

Rule 31A ADR proceedings —Cont'd

Reports upon conclusion of proceedings, SupCt 31A §5.

Selection of neutrals, SupCt 31A §4.

Case evaluators, SupCt 31A §15.

Mini-trials, SupCt 31A §14.

Non-binding arbitration, SupCt 31A §13.

Rule 31A neutrals.

Case evaluation.

Selection of neutrals, SupCt 31A §15.

Compensation, SupCt 31A §12.

Confidentiality, SupCt 31A §10.

Defined, SupCt 31A §2.

Disclosures, SupCt 31A §10.

Impartiality, SupCt 31A §10.

Judicial function privilege and immunity, SupCt 31A §11.

Mini-trials.

Selection of neutrals, SupCt 31A §14.

Non-binding arbitration.

Selection of neutrals, SupCt 31A §13.

Obligations, SupCt 31A §10.

Professional conduct, SupCt 31A §9.

Standards of professional conduct, SupCt 31 Appx A §§1 to 14. See within this heading, "Professional conduct for rule 31 mediators and rule 31A neutrals, standards."

Reports upon conclusion of proceedings, SupCt 31A §5.

Scope of duties and authority, SupCt 31A §10.

Selection, SupCt 31A §4.

Case evaluators, SupCt 31A §15.

Mini-trials, SupCt 31A §14.

Non-binding arbitration, SupCt 31A §13.

Witnesses, neutrals as, SupCt 31A §10.

Rule 31 mediation.

Defined, SupCt 31 §2.

Reports, SupCt 31 §5.

Rule 31 mediators.

Address.

Current address information to be provided, SupCt 31 §15.

Compensation, SupCt 31 §13.

Confidentiality, SupCt 31 §10.

Continuing education, SupCt 31 §15.

Defined, SupCt 31 §2.

Discipline, SupCt 31 §11.

Disclosures, SupCt 31 §10.

Immunity.

Judicial immunity, SupCt 31 §12.

Impartiality, SupCt 31 §10.

Lapse of listing, SupCt 31 §15.

Obligations, SupCt 31 §10.

Pro bono, SupCt 31 §15.

Professional conduct, SupCt 31 §9.

Ethics advisory opinion committee, SupCt 31 §9.

Standards of professional conduct, SupCt 31 Appx A §§1 to 14. See within this heading, "Professional conduct for rule 31 mediators and rule 31A neutrals, standards."

ALTERNATIVE DISPUTE RESOLUTION

—Cont'd

Rule 31 mediators —Cont'd

Qualifications and training, SupCt 31 §14.

Renewal of status, SupCt 31 §15.

Revocation or suspension proceedings,
procedure upon, SupCt 31 §15.Scope of duties and authority, SupCt 31
§10.

Selection, SupCt 31 §4.

Witnesses, neutrals as, SupCt 31 §10.

Summary jury trial.

Applicability of rules, SupCt 31A §§1, 20.

Defined, SupCt 31A §2.

Rule 31A ADR proceedings generally. See
within this heading, "Rule 31A ADR
Proceedings."**AMERICANS WITH DISABILITIES ACT.****Assisting courts with compliance**, SupCt
45.**APPEALS.****Attorney discipline**, SupCt 9 §33.**Capital cases**, SupCt 12.**E-filing**, SupCt 46.**Electronic recordings of court
proceedings.**

Procedure on appeal, SupCt 26 §4.

Procedure when filing notice of appeal,
SupCt 26 §3.**Guardian ad litem, child custody
proceedings.**Appointment of guardian ad litem in
custody proceedings, SupCt 40A §12.**Interlocutory appeals.**

Judges.

Disqualification.

Trial judge of court of record, SupCt
10B §2.

Jurisdiction.

Assumption by supreme court of
jurisdiction over undecided cases,
SupCt 48.**Judges.**

Disqualification.

Trial judge of court of record, SupCt 10B
§2.**Jurisdiction.**Assumption by supreme court of
jurisdiction over undecided cases,
SupCt 48.**Media coverage of court proceedings.**Judge's decision to terminate, suspend,
limit or exclude, SupCt 30.**Post-conviction procedure**, SupCt 28 §10.**Record on appeal.**

Abridgment.

Duty of counsel, SupCt 3.

Rules of appellate procedure.

Applicability, SupCt 1.

ARBITRATION.**Attorneys at law.**

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

ARBITRATION —Cont'd**Attorneys at law** —Cont'd

Rules of professional conduct —Cont'd

Former judges or arbitrators.

Conflicts of interest, SupCt 8 ProfCond
1.12.**Former arbitrator as attorney.**Conflicts of interest, SupCt 8 ProfCond
1.12.**Judges.**

Code of judicial conduct.

Conflicts of interest.

Arbitrator, mediator, neutral, etc,
service as, SupCt 10

JudCondCanon 3 (3.9).

Parenting plans.Divorcing parent education and mediation
fund, SupCt 38 §2.**ATTORNEY DISCIPLINE**, SupCt 9.**Abandonment of law practice.**Receiver attorneys, appointment of receiver
attorneys to protect interests of clients,
SupCt 9 §29.**Abatement of complaint.**Refusal of complainant to proceed not to
abate processing of complaint, SupCt 9
§20.Related pending litigation not to abate
processing of complaint, SupCt 9 §21.Settlement between complainant and
attorney not to abate processing of
complaint, SupCt 9 §20.**Admonition.**

Private informal admonition.

Division of disciplinary cases, SupCt 9
§13.

Types of discipline, SupCt 9 §12.

Age.Disability resulting from age, disease,
disorder, etc.Tennessee lawyer assistance program
(TLAP), SupCt 9 §36.**Appeals**, SupCt 9 §33.**Bank accounts.**Verification of accuracy and integrity of
accounts, SupCt 9 §35.**Board.**

Chair.

Designation, SupCt 9 §4.

Complaints against board or district
committee members or chief
disciplinary counsel, SupCt 9 §16.

Composition, SupCt 9 §4.

Conflicts of interest.

Recusal of members, SupCt 9 §4.

Defined, SupCt 9 §2.

Ethics opinions, SupCt 9 §5.

Expenses, costs, etc, SupCt 9 §31.

Immunity.

Conduct in course of official duties, SupCt
9 §17.

Internal operation, SupCt 9 §4.

ATTORNEY DISCIPLINE —Cont'd**Board —Cont'd**

Jurisdiction.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

Powers, SupCt 9 §4.

Reimbursement of member expenses, SupCt 9 §4.

Vice-chair.

Designation, SupCt 9 §4.

Censure.

Public censure.

Types of discipline, SupCt 9 §12.

Chief disciplinary counsel.

Complaints against board or district committee members or chief disciplinary counsel, SupCt 9 §16.

Expenses, costs, etc, SupCt 9 §31.

Clients.

Appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Complainants.

Defined, SupCt 9 §2.

Complaints.

Abatement.

Refusal of complainant to proceed not to abate processing of complaint, SupCt 9 §20.

Related pending litigation not to abate processing of complaint, SupCt 9 §21.

Settlement between complainant and attorney not to abate processing of complaint, SupCt 9 §20.

Board or district committee members or chief disciplinary counsel, complaints against, SupCt 9 §16.

Formal disciplinary proceedings, SupCt 9 §15.

Initiation, SupCt 9 §15.

Investigation, SupCt 9 §15.

Confidentiality of proceedings, SupCt 9 §32.**Consent discipline, SupCt 9 §24.**

Disbarment by consent.

Attorneys under disciplinary investigation or prosecution, SupCt 9 §23.

Conviction of attorney of crime, SupCt 9 §22.

Grounds for discipline, SupCt 9 §11.

Costs.

Assessment of costs against person subject to discipline, SupCt 9 §31.

Reinstatement, SupCt 9 §30.

Court.

Defined, SupCt 9 §2.

Hearings before court.

Public nature of proceeding, SupCt 9 §32.

Jurisdiction.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

ATTORNEY DISCIPLINE —Cont'd**Declaration under penalty of perjury.**

Defined, SupCt 9 §2.

Definitions, SupCt 9 §2.**Disability.**

Incompetence or incapacity of attorney declared or alleged, SupCt 9 §27.

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

Disability inactive status, SupCt 9 §27.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Disbarment.

Consent disbarment for attorneys under disciplinary investigation or prosecution, SupCt 9 §23.

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Reinstatement not permitted for attorneys disbarred from July 2020 on, SupCt 9 §30.

Types of discipline, SupCt 9 §12.

Disciplinary counsel.

Appointment, SupCt 9 §7.

Defined, SupCt 9 §2.

Immunity.

Conduct in course of official duties, SupCt 9 §17.

Powers and duties, SupCt 9 §7.

Pretrial proceedings, SupCt 9 §19.

Subpoenas, SupCt 9 §19.

Witnesses, SupCt 9 §19.

Discovery, SupCt 9 §19.**Disease.**

Disability resulting from age, disease, disorder, etc.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

District committees.

Appointment, SupCt 9 §6.

Complaints against board or district committee members or chief disciplinary counsel, SupCt 9 §16.

Conflicts of interest.

Recusal, SupCt 9 §6.

Defined, SupCt 9 §2.

Expenses, costs, etc, SupCt 9 §31.

Hearing panels, SupCt 9 §6.

Immunity.

Conduct in course of official duties, SupCt 9 §17.

Jurisdiction.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

Reviewing members.

Duties, SupCt 9 §6.

Terms of members, SupCt 9 §6.

Districts.

Disciplinary districts, SupCt 9 §3.

ATTORNEY DISCIPLINE —Cont'd**Diversion of disciplinary cases**, SupCt 9 §13.**Ethics opinions.**

Periodic issuance, SupCt 9 §5.

Evidence.

Applicability of rules of evidence, SupCt 9 §34.

Fees.

Registration fee.

Assessment of attorneys, SupCt 9 §10.

Grounds for discipline, SupCt 9 §11.

Privilege tax.

Failure to pay, SupCt 9 §26.

Hearing panels, SupCt 9 §6.

Applicability of rules of civil procedure and of evidence, SupCt 9 §34.

Defined, SupCt 9 §2.

Formal disciplinary proceedings, SupCt 9 §15.

Conviction of attorney of serious crime, SupCt 9 §22.

Jurisdiction.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

Pretrial proceedings, SupCt 9 §19.

Public nature of proceedings, SupCt 9 §32.

Subpoenas, SupCt 9 §19.

Witnesses, SupCt 9 §19.

Immunity.

Conduct in course of official duties, SupCt 9 §17.

Inactive status.

Disability inactive status, SupCt 9 §27.

Incompetence or incapacity of attorney declared or alleged, SupCt 9 §27.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Exemptions from registration fee.

Application to assume inactive status, SupCt 9 §10.

Reinstatement, SupCt 9 §30.

Incompetence or incapacity of attorney declared or alleged, SupCt 9 §27.**Judicial diversion.**

Effect of diversion on disciplinary proceedings, SupCt 9 §22.

Jurisdiction.

Multijurisdictional practice, SupCt 9 §9.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

Law student practice, SupCt 7 §10.03.**Lawyer assistance program.**

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

Misconduct.

Grounds for discipline, SupCt 9 §11.

Multijurisdictional practice, SupCt 9 §9.**ATTORNEY DISCIPLINE —Cont'd****Notice of discipline to clients, adverse parties and other counsel**, SupCt 9 §28.**Opinions.**

Ethics opinions, SupCt 9 §5.

Opposing counsel.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Orders of court.

Noncompliance.

Grounds for discipline, SupCt 9 §11.

Other states or jurisdictions.

Reciprocal discipline, SupCt 9 §25.

Overdrafts.

Trust accounts.

Detection and prevention of violations, SupCt 9 §35.

Panels.

Defined, SupCt 9 §2.

Parties.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Practice monitors.

Defined, SupCt 9 §2.

Immunity.

Conduct in course of official duties, SupCt 9 §17.

Types of discipline, SupCt 9 §12.

Preamble, SupCt 9 §1.**Pretrial proceedings**, SupCt 9 §19.**Private informal admonition.**

Diversion of disciplinary cases, SupCt 9 §13.

Types of discipline, SupCt 9 §12.

Private reprimand.

Diversion of disciplinary cases, SupCt 9 §13.

Resolution by private reprimand, SupCt 9 §§15, 16.

Types of discipline, SupCt 9 §12.

Privilege tax.

Failure to pay, SupCt 9 §26.

Probation, SupCt 9 §14.**Pro bono reporting statement.**

Annual registration statement, form, SupCt 9 Appx A.

Filing by attorneys liable for registration fee, SupCt 9 §10.

Procedure.

Applicability of rules of civil procedure, SupCt 9 §34.

Protocol memorandum.

Defined, SupCt 9 §2.

Public censure.

Types of discipline, SupCt 9 §12.

Receiver attorneys.

Appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Reciprocal discipline, SupCt 9 §25.**Recordkeeping.**

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

ATTORNEY DISCIPLINE —Cont'd**Refund of fees.**

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Reinstatement, SupCt 9 §30.

Notice of discipline to clients, adverse parties and other counsel.

Compliance with requirements as condition of reinstatement, SupCt 9 §28.

Student loan default, suspension of license, SupCt 9 §37.

Reprimand.

Private reprimand.

Diversion of disciplinary cases, SupCt 9 §13.

Resolution by private reprimand, SupCt 9 §§15, 16.

Types of discipline, SupCt 9 §12.

Restitution.

Types of discipline, SupCt 9 §12.

Retired.

Defined, SupCt 9 §2.

Return of property of client.

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Revision of rule 9.

Charts comparing old and new versions, SupCt 9 Appx B.

RPC.

Defined, SupCt 9 §2.

Rule.

Defined, SupCt 9 §2.

Section.

Defined, SupCt 9 §2.

Serious crime.

Conviction of attorney of crime, SupCt 9 §22.

Defined, SupCt 9 §2.

Grounds for discipline, SupCt 9 §11.

Serve or service.

Defined, SupCt 9 §2.

Service of petition, SupCt 9 §18.**Student loans.**

Default on student loans.

Suspension of license, SupCt 9 §37.

Subpoenas, SupCt 9 §19.**Supervised practice prior to admission**

by examination score, SupCt 7 §10.04.

Suspension.

Conviction of attorney of crime, SupCt 9 §22.

Privilege tax.

Failure to pay, SupCt 9 §26.

Probation in lieu of suspension, SupCt 9 §14.

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Reinstatement, SupCt 9 §30.

Student loans.

Default on student loans.

Suspension of license, SupCt 9 §37.

Types of discipline, SupCt 9 §12.

ATTORNEY DISCIPLINE —Cont'd**Temporary suspension.**

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Types of discipline, SupCt 9 §12.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.**Time limitations, SupCt 9 §34.****Transcripts, SupCt 9 §34.****Trust accounts.**

Detection and prevention of violations, SupCt 9 §35.

Types of discipline, SupCt 9 §12.**Withdrawal from representation.**

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Witnesses, SupCt 9 §19.**ATTORNEY IN FACT.****Judges.**

Code of judicial conduct.

Attorney in fact.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

ATTORNEYS AT LAW.**Abridgment of record on appeal.**

Duty of counsel, SupCt 3.

Access to justice commission, SupCt 50 §§1, 2.**Admission of attorneys, SupCt 6.**

Applications.

Bar examination.

Transfer of uniform bar examination score, admission by, SupCt 7 §3.05.

Practice before admission, SupCt 7 §10.04.

Rules of professional conduct.

Failure to disclose relevant facts, SupCt 8 ProfCond 8.1.

False statements, SupCt 8 ProfCond 8.1.

Admission to practice law.

Tennessee law course required for applicants, SupCt 7 §1.07.

Military spouses, temporary license and admission, SupCt 7 §10.06.

Advertising.

Intermediary organizations, SupCt 44.

Rules of professional conduct, SupCt 8 ProfCond 7.6.

Rules of professional conduct, SupCt 8 ProfCond 7.2.

Cooperatives for lawyer advertising and other intermediary organizations, SupCt 8 ProfCond 7.6.

Solicitation of employment directed to specifically identified recipients, SupCt 8 ProfCond 7.3.

Alcoholic beverages.

Conditional admission of rehabilitating applicants, SupCt 7 §10.05.

Lawyer assistance program, SupCt 33.

Alternative dispute resolution.

Participation by attorney.

Rule 31A ADR proceedings, SupCt 31A §6.

ATTORNEYS AT LAW —Cont'd**Alternative dispute resolution —Cont'd**

Participation of attorneys, SupCt 31 §6.

Appointment of counsel.

Indigent persons, SupCt 13 to 16.

See **INDIGENT PERSONS**.

Mental health proceedings, SupCt 15.

Parole revocation proceedings, SupCt 16.

Rules of professional conduct.

Public service.

Avoiding court appointment, SupCt 8

ProfCond 6.2.

Bar examination. See within this heading, "Licensing of attorneys."

Board of law examiners. See within this heading, "State board of law examiners."

Board of professional responsibility. See within this heading, "Discipline."

Capital cases.

Compensation of appointed counsel, SupCt 13.

Qualifications of appointed counsel, SupCt 13.

Collaborative family law.

Appropriateness of process.

Assessment by prospective collaborative lawyer, SupCt 53 §14.

Definition of collaborative lawyer, SupCt 53 §2.

Disqualification of collaborative lawyer and lawyers in associated firm, SupCt 53 §9.

Exception for low-income parties, SupCt 53 §10.

Government entity as party, SupCt 53 §11.

Family violence.

Inquiries by prospective collaborative lawyer, SupCt 53 §15.

Professional responsibility.

Standards not affected by provisions, SupCt 53 §13.

Commingling funds.

Rules of professional conduct.

Safekeeping property, SupCt 8 ProfCond 1.15.

Conditional admission of rehabilitating applicants, SupCt 7 §10.05.**Confidentiality of information.**

Rules of professional conduct, SupCt 8 ProfCond 1.6.

Nonclients, transactions with.

Confidential information inadvertently received by attorney relevant to representation, SupCt 8 ProfCond 4.4.

Prospective clients.

Duties towards prospective clients, SupCt 8 ProfCond 1.18.

State board of law examiners.

Records and files, SupCt 7 §12.11.

ATTORNEYS AT LAW —Cont'd**Conflicts of interest.**

Rules of professional conduct, SupCt 8 ProfCond 1.7.

Current clients.

Restrictions on transactions, SupCt 8 ProfCond 1.8.

Former clients, SupCt 8 ProfCond 1.9.

Former judges or arbitrators, SupCt 8 ProfCond 1.12.

Imputed disqualification, SupCt 8 ProfCond 1.10.

Prohibited transactions, SupCt 8 ProfCond 1.8.

Prospective clients.

Duties towards prospective clients, SupCt 8 ProfCond 1.18.

Public service.

Applicability of provisions, SupCt 8 ProfCond 6.5.

Successive government and private employment, SupCt 8 ProfCond 1.11.

Continuing legal education, SupCt 21 §§1 to 11.

Annual CLE compliance summary, SupCt 21 §10.

Commission, SupCt 21 §1.

Annual report, SupCt 21 §6.

Funding, SupCt 21 §8.

Compliance summary.

Annual CLE compliance summary, SupCt 21 §10.

Credits, SupCt 21 §4.

Effective date of rule, SupCt 21 §9.

Exemptions, SupCt 21 §2.

Financing, SupCt 21 §8.

Noncompliance and sanctions, SupCt 21 §7.

Pro bono publico representation.

Emeritus attorneys, pro bono legal services by.

Compliance with requirements, SupCt 50A.

Providers, SupCt 21 §5.

Reports, SupCt 21 §6.

Requirements, SupCt 21 §3.

Sanctions, SupCt 21 §7.

Scope, SupCt 21 §2.

Contracts.

Indigent persons, representation.

Fixed fee representation, SupCt 13.

Costs.

State board of law examiners.

Formal actions, SupCt 7 §13.05.

Review of board decisions, SupCt 7 §14.02.

Crimes of attorneys.

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.

Criminal cases.

Contingent fees.

Rules of professional conduct, SupCt 8 ProfCond 1.5.

ATTORNEYS AT LAW —Cont'd**Disasters.**

Legal services provided after determination of major disaster, SupCt 47.

Disbarment.

Attorney discipline generally.

See ATTORNEY DISCIPLINE.

Discipline.

Attorney discipline rules generally, SupCt 9§§1 to SupCt 9 §37.

See ATTORNEY DISCIPLINE.

Rules of professional conduct.

Choice of law, SupCt 8 ProfCond 8.5.

Failure to disclose relevant facts, SupCt 8 ProfCond 8.1.

Reporting professional misconduct, SupCt 8 ProfCond 8.3.

Supreme court of Tennessee as disciplinary authority, SupCt 8 ProfCond 8.5.

Trust accounts.

Interest on lawyers' trust accounts, noncompliance with provisions, SupCt 43.

Discrimination.

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

Education.

Continuing legal education. See within this heading, "Continuing legal education and specialist certification."

Licensing of attorneys.

Educational requirements for admission. See within this heading, "Licensing of attorneys."

Tennessee law course required for applicants, SupCt 7 §1.07.

Military spouses, temporary license and admission, SupCt 7 §10.06.

Emeritus attorneys.

Pro bono services, SupCt 50A.

Employers and employees.

Multijurisdictional practice.

Disciplinary authority, SupCt 8 ProfCond 8.5.

Services provided by attorney for employer, SupCt 8 ProfCond 5.5.

Ethics.

Rules of professional conduct, SupCt 8. See within this heading, "Rules of professional conduct."

Fees.

Generally.

See ATTORNEYS' FEES.

Rules of professional conduct, SupCt 8 ProfCond 1.5.

Firms.

Conflicts of interest.

Imputed disqualification of firm members, SupCt 8 ProfCond 1.10.

Definition of law firm, SupCt 8 ProfCond 1.0.

ATTORNEYS AT LAW —Cont'd**Firms —Cont'd**

Fees shared with nonattorneys, SupCt 8 ProfCond 5.4.

Law-related services.

Responsibilities for services provided, SupCt 8 ProfCond 5.7.

Names.

Legal services, information about.

Firm names and letterheads, SupCt 8 ProfCond 7.5.

Noncompetition agreements.

Restrictions on right to practice, SupCt 8 ProfCond 5.6.

Nonlawyer employees.

Responsibilities for, SupCt 8 ProfCond 5.3.

Partners, managing or supervisory lawyers.

Compliance with RPC, duties to ensure, SupCt 8 ProfCond 5.1.

Nonlawyer employees.

Responsibilities for, SupCt 8 ProfCond 5.3.

Partnership with nonattorneys.

Professional independence of attorney, SupCt 8 ProfCond 5.4.

Professional independence of attorney, SupCt 8 ProfCond 5.4.

Restrictions on right to practice, SupCt 8 ProfCond 5.6.

Sale of law practice, SupCt 8 ProfCond 1.17.

Subordinate lawyers.

Compliance with RPC, duties as to, SupCt 8 ProfCond 5.2.

Fraud.

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.

Definition of fraud or fraudulent, SupCt 8 ProfCond 1.0.

Scope of representation, SupCt 8 ProfCond 1.2.

Government employment.

Successful government and private employment, SupCt 8 ProfCond 1.11.

Guardians ad litem.

Guidelines for guardians ad litem, SupCt 40.

Harassment.

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

Impaired lawyer programs.

Tennessee lawyer assistance program (TLAP), SupCt 33.

Indigent persons.

Adoption proceedings where guardian ad litem appointed.

Appointment of counsel, SupCt 13.

Compensation of guardian ad litem, SupCt 13.

ATTORNEYS AT LAW —Cont'd**Indigent persons —Cont'd**

- Appointment of counsel, SupCt 13 to 16.
- See INDIGENT PERSONS.

In-house counsel.

- Registration, SupCt 7 §10.01.

Insurance.

- Prepaid legal insurance providers, SupCt 44.
- Rules of professional conduct, SupCt 8 ProfCond 7.6.

Intermediary organizations, SupCt 44.**Judges.**

- Code of judicial conduct.
- Discipline.
 - Cooperation with disciplinary authorities, SupCt 10 JudCondCanon 2 (2.16).
- Misconduct of judge or attorney.
 - Duties of judge, SupCt 10 JudCondCanon 2 (2.15).
- Practice of law.
 - Conflicts of interest, SupCt 10 JudCondCanon 3 (3.10).

Law schools.

- Approval, SupCt 7 §2.02.
- Tennessee law schools, SupCt 7 §17.01.
 - Confidentiality of approval and evaluation procedures, SupCt 7 §17.07.
 - Conflicts of interest of board members, fact finders, site evaluation teams, etc, SupCt 7 §17.10.
 - Deficiencies in mission, actions when board has reasonable cause, SupCt 7 §17.04.
 - Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
 - Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
 - Show cause order, hearing, SupCt 7 §17.06.
- Fact finder to elicit relevant facts, SupCt 7 §17.05.
- Noncompliance with standards, actions when board has reasonable cause, SupCt 7 §17.04.
- Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
- Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
- Show cause order, hearing, SupCt 7 §17.06.
- Review and regulation of Tennessee-approved law schools, board's functions, SupCt 7 §17.02.
- Site evaluation of Tennessee-approved law schools, SupCt 7 §17.03.

ATTORNEYS AT LAW —Cont'd**Law schools —Cont'd**

- Licensing of attorneys.
 - Educational requirements for admission.
 - See within this heading, "Licensing of attorneys."
- Tennessee law schools.
 - Approved law schools, SupCt 7 §17.01.
 - Confidentiality of approval and evaluation procedures, SupCt 7 §17.07.
 - Conflicts of interest of board members, fact finders, site evaluation teams, etc, SupCt 7 §17.10.
 - Deficiencies in mission, actions when board has reasonable cause, SupCt 7 §17.04.
 - Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
 - Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
 - Show cause order, hearing, SupCt 7 §17.06.
 - Fact finder to elicit relevant facts, SupCt 7 §17.05.
 - Noncompliance with standards, actions when board has reasonable cause, SupCt 7 §17.04.
 - Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
 - Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
 - Show cause order, hearing, SupCt 7 §17.06.
 - Review and regulation of Tennessee-approved law schools, board's functions, SupCt 7 §17.02.
 - Site evaluation of Tennessee-approved law schools, SupCt 7 §17.03.
- Unaccredited law schools.
 - Eligibility of graduates to take bar examination, SupCt 7 §2.02.
- Law student practice, SupCt 7 §10.03.**
- Lawyer assistance program, SupCt 33.**
- Letterheads.**
 - Legal services, information about.
 - Firm names and letterheads, SupCt 8 ProfCond 7.5.
- Licensing of attorneys.**
 - Anonymity in grading, SupCt 7 §4.07.
 - Applications for admission.
 - Additional information may be required, SupCt 7 §3.07.
 - Amendment.
 - Obligation of applicant to update information, SupCt 7 §3.02.
 - Bar examination.
 - Transfer of uniform bar examination score, admission by, SupCt 7 §3.05.

ATTORNEYS AT LAW —Cont'd
Licensing of attorneys —Cont'd
Applications for admission —Cont'd
Denial, SupCt 7 §9.07.
Disabled applicant, SupCt 7 §3.11.
Examination score.
Expiration of application for admission
on exam score, SupCt 7 §3.04.
Foreign country, applicants from.
Additional information from applicants,
SupCt 7 §7.02.
Forms to be furnished, SupCt 7 §3.01.
Nonstandard testing accommodations,
SupCt 7 §3.11.
Other jurisdiction, attorney licensed in.
Practice in Tennessee pending
admission for applicant licensed in
another jurisdiction, SupCt 7
§10.07.
Process for application, SupCt 7 §3.01.
Tennessee law course required for
applicants, SupCt 7 §1.07.
Military spouses, temporary license and
admission, SupCt 7 §10.06.
Time for.
No discretion to waive filing dates,
SupCt 7 §3.10.
Bar examination, SupCt 7 §1.03.
Application for examination or
reexamination.
Expiration of application for admission
on exam score, SupCt 7 §3.04.
Filing date, SupCt 7 §3.03.
Educational criteria for eligibility.
Unaccredited US law schools,
graduates of.
Conditions for eligibility to take bar
examination, SupCt 7 §2.02.
Effect on taking examination on
eligibility for admission, SupCt 7
§4.06.
Expiration of application for admission
without examination, SupCt 7 §5.03.
Expiration of score, SupCt 7 §4.07.
Failure to pass bar examination.
No review, SupCt 7 §14.04.
First examination.
Notice of intent to take.
Waiver of filing date, prohibited,
SupCt 7 §3.10.
Foreign-educated applicants, SupCt 7
§§7.01, 7.02.
Grading.
Anonymity, SupCt 7 §4.07.
Nonstandard testing accommodations,
SupCt 7 §3.11.
Notice of intent to take first examination.
Waiver of filing date, prohibited, SupCt
7 §3.10.
Persons admitted in other jurisdictions,
SupCt 7 §§5.01, 5.02.
Expiration of application for admission
without examination, SupCt 7
§5.03.

ATTORNEYS AT LAW —Cont'd
Licensing of attorneys —Cont'd
Bar examination —Cont'd
Place, SupCt 7 §4.03.
Purpose, SupCt 7 §4.01.
Reexamination, SupCt 7 §4.05.
Application for examination or
reexamination.
Expiration of application for
admission on exam score, SupCt
7 §3.04.
Filing date, SupCt 7 §3.03.
Scope, SupCt 7 §4.04.
Structure, SupCt 7 §4.02.
Subjects tested, SupCt 7 §4.04.
Time for, SupCt 7 §4.03.
Transfer of uniform bar examination
score, admission by, SupCt 7 §3.05.
Waiver of examination, SupCt 7 §1.04.
Certificate of board, SupCt 7 §9.01.
Character and fitness investigation.
Applicable standards, SupCt 7 §6.01.
Assistance in investigation, SupCt 7
§6.02.
Candor.
Duty of applicant, SupCt 7 §6.04.
Certificate of good moral character,
SupCt 7 §6.06.
Failure of applicant to furnish
information, SupCt 7 §6.04.
False information or statements on
application, SupCt 7 §6.05.
Investigation procedures, SupCt 7 §6.03.
Investigatory committees, SupCt 7 §6.02.
Refusal of applicant to furnish
information, SupCt 7 §6.04.
Commitment to serve the administration of
justice in Tennessee.
Applicable standard, SupCt 7 §8.01.
Evidence of commitment, SupCt 7 §8.01.
Statement of intent, SupCt 7 §8.01.
Conditional admission, SupCt 7 §10.05.
Denial of license, SupCt 7 §9.07.
Educational requirements for admission,
SupCt 7 §1.03.
Bachelor degrees, SupCt 7 §2.01.
Law schools.
Approval, SupCt 7 §§2.02, 12.02.
Experiential learning programs.
Attorneys employed by or associated
with programs, admission to
practice, SupCt 7 §10.02.
Law school graduates.
Practice of law, SupCt 7 §10.04.
Law student practice, SupCt 7 §10.03.
Unaccredited by American Bar
Association.
Eligibility of graduates to take bar
examination, SupCt 7 §2.02.
Tennessee law course required for
applicants, SupCt 7 §1.07.
Military spouses, temporary licensing,
SupCt 7 §10.06.

ATTORNEYS AT LAW —Cont'd**Licensing of attorneys —Cont'd**

Educational requirements for admission
—Cont'd

Unaccredited US law schools, graduates
of.

Eligibility to take bar examination,
conditions, SupCt 7 §2.02.

Effective date of admission, SupCt 7 §9.03.

Examination. See within this subheading,
“Bar examination.”

Existing licenses, SupCt 7 §1.06.

Fees.

Payment mandatory, SupCt 7 §11.02.

Refunds, SupCt 7 §11.03.

Schedule of fees, SupCt 7 §11.01.

Foreign-educated applicants.

Additional information from applicants
licensed in foreign countries, SupCt 7
§7.02.

Eligibility to take examination, SupCt 7
§7.01.

In-house counsel, registration, SupCt 7
§10.01.

Issuance of license, SupCt 7 §9.02.

Disapproval by court, SupCt 7 §9.05.

Replacement licenses, SupCt 7 §9.06.

Subsequent events.

Duty of applicant to inform board,
SupCt 7 §9.04.

Law schools. See within this subheading,
“Educational requirements for
admission.”

Military spouses, temporary license and
admission, SupCt 7 §10.06.

Other jurisdiction, licensing in.

Practice in Tennessee pending admission
for applicant licensed in another
jurisdiction, SupCt 7 §10.07.

Persons admitted in other jurisdictions.

Expiration of application for admission
without examination, SupCt 7 §5.03.

Waiver of examination on demonstration
of skills and abilities, SupCt 7 §§5.01,
5.02.

Practice before admission, SupCt 7 §10.04.

Reinstatement of license, SupCt 7 §§16.01
to 16.03.

Replacement licenses, SupCt 7 §9.06.

Requirement of license, SupCt 7 §1.01.

State board of law examiners.

Certificate of board, SupCt 7 §1.02.

Criteria for, SupCt 7 §1.03.

Eligibility, certificate, SupCt 7 §1.02.

Criteria, SupCt 7 §1.03.

Status of persons admitted to bar, SupCt 7
§1.05.

Surrender of law license, SupCt 7 §15.01.

Acceptance of surrender, effect of order,
SupCt 7 §15.03.

Supreme court decision on petition to
surrender, SupCt 7 §15.02.

Temporary admission.

Military spouses, temporary license and
admission, SupCt 7 §10.06.

ATTORNEYS AT LAW —Cont'd**Mental health.**

Conditional admission of rehabilitating
applicants, SupCt 7 §10.05.

Lawyer assistance program, SupCt 33.

Military spouses.

Licensing of attorneys.

Temporary license and admission, SupCt
7 §10.06.

Multijurisdictional practice of law, SupCt
8 ProfCond 5.5.

Disasters.

Legal services provided after
determination of major disaster,
SupCt 47.

Disciplinary authority, SupCt 8 ProfCond
8.5.

Noncompetition agreements.

Rules of professional conduct.

Restrictions on right to practice, SupCt 8
ProfCond 5.6.

Nonresidents.

Appearance in court.

Admitted to practice in Tennessee but
having no office in state, SupCt 20.

Partnerships.

Rules of professional conduct.

Definition of partner, SupCt 8 ProfCond
1.0.

Nonattorneys, partnership with.

Professional independence of attorney,
SupCt 8 ProfCond 5.4.

Partners, managing or supervisory
lawyers.

Compliance with RPC, duties to ensure,
SupCt 8 ProfCond 5.1.

Nonlawyer employees, responsibilities
for, SupCt 8 ProfCond 5.3.

Practice of law.

Abandonment of law practice.

Receiver attorneys, appointment of
receiver attorneys to protect interests
of clients, SupCt 9 §29.

Judges.

Code of judicial conduct.

Conflicts of interest, SupCt 10
JudCondCanon 3 (3.10).

Pro bono legal services.

Emeritus attorneys, SupCt 50A.

Professional conduct.

Rules of professional conduct, SupCt 8
ProfCond 1.0 to 8 ProfCond 8.5.

Pro hac vice, SupCt 19.

Multijurisdictional practice of law, SupCt 8
ProfCond 5.5.

Disciplinary authority, SupCt 8 ProfCond
8.5.

Referral services, SupCt 44.

Rules of professional conduct, SupCt 8
ProfCond 7.6.

Reinstatement of license, SupCt 7 §§16.01
to 16.03.

ATTORNEYS AT LAW —Cont'd

- Rules of professional conduct**, SupCt 8 ProfCond 1.0 to 8 ProfCond 8.5.
- Accounts.
 - Safekeeping property, SupCt 8 ProfCond 1.15.
- Acquisition of interest in cause.
- Conflicts of interest.
 - Prohibited transactions, SupCt 8 ProfCond 1.8.
- Advertising, SupCt 8 ProfCond 7.2.
- Cooperatives for lawyer advertising and other intermediary organizations, SupCt 8 ProfCond 7.6.
- Solicitation of employment directed to specifically identified recipients, SupCt 8 ProfCond 7.3.
- Advisor role of attorney, SupCt 8 ProfCond 2.1.
- Advocacy role of attorney, SupCt 8 ProfCond 3.1 to 8 ProfCond 3.9.
- Candor towards tribunal, SupCt 8 ProfCond 3.3.
- Decorum of tribunal.
 - Duties of attorney as to, SupCt 8 ProfCond 3.5.
- Ex parte communications, SupCt 8 ProfCond 3.5.
- Expediting litigation, SupCt 8 ProfCond 3.2.
- Fairness to opposition, SupCt 8 ProfCond 3.4.
- Frivolous claims, SupCt 8 ProfCond 3.1.
- Impartiality of tribunal.
 - Duties of attorney as to, SupCt 8 ProfCond 3.5.
- Meritorious claims and contentions, SupCt 8 ProfCond 3.1.
- Non-adjudicative proceedings, SupCt 8 ProfCond 3.9.
- Prosecutors.
 - Special responsibilities, SupCt 8 ProfCond 3.8.
- Publicity, SupCt 8 ProfCond 3.6.
- Witnesses.
 - Attorney as witness, SupCt 8 ProfCond 3.7.
- Arbitrators.
 - Former judges or arbitrators.
 - Conflicts of interest, SupCt 8 ProfCond 1.12.
- Bar admissions.
 - Failure to disclose relevant facts, SupCt 8 ProfCond 8.1.
 - False statements, SupCt 8 ProfCond 8.1.
- Belief.
 - Defined, SupCt 8 ProfCond 1.0.
- Believes.
 - Defined, SupCt 8 ProfCond 1.0.
- Candor.
 - Nonclients, candor in statements to others, SupCt 8 ProfCond 4.1.
- Tribunal, candor towards, SupCt 8 ProfCond 3.3.

ATTORNEYS AT LAW —Cont'd

- Rules of professional conduct —Cont'd**
- Client-lawyer relationship, SupCt 8 ProfCond 1.0 to 8 ProfCond 1.18.
- Client's role, SupCt 8 ProfCond 1.2.
- Commingling funds.
 - Safekeeping property, SupCt 8 ProfCond 1.15.
- Communications with client, SupCt 8 ProfCond 1.4.
- Competent representation, SupCt 8 ProfCond 1.1.
- Confidentiality, SupCt 8 ProfCond 1.6.
- Nonclients, transactions with.
 - Confidential information inadvertently received by attorney relevant to representation, SupCt 8 ProfCond 4.4.
- Prospective clients.
 - Duties towards prospective clients, SupCt 8 ProfCond 1.18.
- Confirmed in writing.
 - Defined, SupCt 8 ProfCond 1.0.
- Conflicts of interest, SupCt 8 ProfCond 1.7.
- Current clients.
 - Restrictions on transactions, SupCt 8 ProfCond 1.8.
- Former clients, SupCt 8 ProfCond 1.9.
- Former judges or arbitrators, SupCt 8 ProfCond 1.12.
- Imputed disqualification, SupCt 8 ProfCond 1.10.
- Prohibited transactions, SupCt 8 ProfCond 1.8.
- Prospective clients.
 - Duties towards prospective clients, SupCt 8 ProfCond 1.18.
- Public service.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Successive government and private employment, SupCt 8 ProfCond 1.11.
- Contingent fees, SupCt 8 ProfCond 1.5.
- Court-annexed limited legal services programs.
 - Conflicts of interest and disqualifications.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Court-appointed representation.
 - Avoiding court appointments, SupCt 8 ProfCond 6.2.
- Crimes.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
- Declining representation, SupCt 8 ProfCond 1.16.
- Decorum of tribunal.
 - Duties of attorney as to, SupCt 8 ProfCond 3.5.
- Definitions, SupCt 8 ProfCond 1.0.
- Diligence of attorney, SupCt 8 ProfCond 1.3.
- Diminished capacity.
 - Representing clients with diminished capacity, SupCt 8 ProfCond 1.14.

ATTORNEYS AT LAW —Cont'd**Rules of professional conduct —Cont'd**

- Disability, client under.
 - Representing clients under disability, SupCt 8 ProfCond 1.14.
- Discipline.
 - Choice of law, SupCt 8 ProfCond 8.5.
 - Failure to disclose relevant facts, SupCt 8 ProfCond 8.1.
 - Reporting professional misconduct, SupCt 8 ProfCond 8.3.
 - Supreme court of Tennessee as disciplinary authority, SupCt 8 ProfCond 8.5.
- Dishonest conduct.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
- Dispute resolution neutrals.
 - Attorney as, SupCt 8 ProfCond 2.4.
- Division of fees, SupCt 8 ProfCond 1.5.
- Domestic relations.
 - Contingent fees, SupCt 8 ProfCond 1.5.
- Endorsements.
 - Paid endorsements, SupCt 8 ProfCond 7.2.
- Evaluations for third party use, SupCt 8 ProfCond 2.3.
- Exculpatory evidence.
 - Prosecutors.
 - Special responsibilities, SupCt 8 ProfCond 3.8.
- Ex parte communications, SupCt 8 ProfCond 3.5.
- Expediting litigation, SupCt 8 ProfCond 3.2.
- Fairness to opposition, SupCt 8 ProfCond 3.4.
- False or misleading communications about legal services, SupCt 8 ProfCond 7.1.
- Fees, SupCt 8 ProfCond 1.5.
- Fields of practice.
 - Communication about fields of practice, SupCt 8 ProfCond 7.4.
- Files of client.
 - Entitlement of client to files in attorney's possession, SupCt 8 ProfCond 1.18.
- Financial assistance to client.
 - Conflicts of interest.
 - Prohibited transactions, SupCt 8 ProfCond 1.8.
- Firm.
 - Conflicts of interest.
 - Imputed disqualification of firm members, SupCt 8 ProfCond 1.10.
 - Defined, SupCt 8 ProfCond 1.0.
 - Fees shared with nonattorneys, SupCt 8 ProfCond 5.4.
 - Law-related services.
 - Responsibilities for services provided, SupCt 8 ProfCond 5.7.
 - Names.
 - Legal services, information about.
 - Firm names and letterheads, SupCt 8 ProfCond 7.5.

ATTORNEYS AT LAW —Cont'd**Rules of professional conduct —Cont'd**

- Firm —Cont'd
 - Noncompetition agreements.
 - Restrictions on right to practice, SupCt 8 ProfCond 5.6.
 - Nonlawyer employees.
 - Responsibilities for, SupCt 8 ProfCond 5.3.
 - Partners, managing or supervisory lawyers.
 - Compliance with RPC, duties to ensure, SupCt 8 ProfCond 5.1.
 - Nonlawyer employees.
 - Responsibilities for, SupCt 8 ProfCond 5.3.
 - Partnership with nonattorneys.
 - Professional independence of attorney, SupCt 8 ProfCond 5.4.
 - Professional independence of attorney, SupCt 8 ProfCond 5.4.
 - Restrictions on right to practice, SupCt 8 ProfCond 5.6.
 - Sale of law practice, SupCt 8 ProfCond 1.17.
 - Subordinate lawyers.
 - Compliance with RPC, duties as to, SupCt 8 ProfCond 5.2.
- Former clients.
 - Conflicts of interest, SupCt 8 ProfCond 1.9.
- Fraud or fraudulent.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
 - Defined, SupCt 8 ProfCond 1.0.
 - Scope of representation, SupCt 8 ProfCond 1.2.
- Frivolous claims, SupCt 8 ProfCond 3.1.
- Government employment.
 - Successive government and private employment, SupCt 8 ProfCond 1.11.
- Impartiality of tribunal.
 - Duties of attorney as to, SupCt 8 ProfCond 3.5.
- Imputed disqualification, SupCt 8 ProfCond 1.10.
- Public service.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Influencing tribunal or government agency on nonmeritorious grounds.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
- Information about legal services, SupCt 8 ProfCond 7.1 to 8 ProfCond 7.6.
- Advertising, SupCt 8 ProfCond 7.2.
 - Cooperatives for lawyer advertising and other intermediary organizations, SupCt 8 ProfCond 7.6.
- False or misleading communications, SupCt 8 ProfCond 7.1.
- Fields of practice, SupCt 8 ProfCond 7.4.
- Firm names and letterheads, SupCt 8 ProfCond 7.5.

ATTORNEYS AT LAW —Cont'd
Rules of professional conduct —Cont'd
Information about legal services —Cont'd
Intermediary organizations, SupCt 8 ProfCond 7.6.
Solicitation directed to specifically identified recipients, SupCt 8 ProfCond 7.3.
Informed consent.
Defined, SupCt 8 ProfCond 1.0.
Integrity of profession.
Maintenance, SupCt 8 ProfCond 8.1 to 8 ProfCond 8.5.
Intermediary role of attorney, SupCt 8 ProfCond 2.2.
IOLTA.
Safekeeping property, SupCt 8 ProfCond 1.15.
Judges.
Assisting in conduct violating judicial conduct codes.
Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
False statements as to qualifications, SupCt 8 ProfCond 8.2.
Former judges or arbitrators.
Conflicts of interest, SupCt 8 ProfCond 1.12.
Impartiality and decorum of tribunal.
Communications with judge, juror, etc., SupCt 8 ProfCond 3.5.
Jury.
Impartiality and decorum of tribunal.
Communications with judge, juror, etc., SupCt 8 ProfCond 3.5.
Knowingly.
Defined, SupCt 8 ProfCond 1.0.
Known.
Defined, SupCt 8 ProfCond 1.0.
Knows.
Defined, SupCt 8 ProfCond 1.0.
Law firm.
Conflicts of interest.
Imputed disqualification of firm members, SupCt 8 ProfCond 1.10.
Defined, SupCt 8 ProfCond 1.0.
Fees shared with nonattorneys, SupCt 8 ProfCond 5.4.
Law-related services.
Responsibilities for services provided, SupCt 8 ProfCond 5.7.
Names.
Legal services, information about.
Firm names and letterheads, SupCt 8 ProfCond 7.5.
Noncompetition agreements.
Restrictions on right to practice, SupCt 8 ProfCond 5.6.
Nonlawyer employees.
Responsibilities for, SupCt 8 ProfCond 5.3.
Partners, managing or supervisory lawyers.
Compliance with RPC, duties to ensure, SupCt 8 ProfCond 5.1.

ATTORNEYS AT LAW —Cont'd
Rules of professional conduct —Cont'd
Law firm —Cont'd
Partners, managing or supervisory lawyers —Cont'd
Nonlawyer employees.
Responsibilities for, SupCt 8 ProfCond 5.3.
Partnership with nonattorneys.
Professional independence of attorney, SupCt 8 ProfCond 5.4.
Professional independence of attorney, SupCt 8 ProfCond 5.4.
Restrictions on right to practice, SupCt 8 ProfCond 5.6.
Sale of law practice, SupCt 8 ProfCond 1.17.
Subordinate lawyers.
Compliance with RPC, duties as to, SupCt 8 ProfCond 5.2.
Legal insurance.
Prepaid legal insurance providers.
Rules of professional conduct, SupCt 8 ProfCond 7.6.
Legal services, information about, SupCt 8 ProfCond 7.1 to 8 ProfCond 7.6.
Advertising, SupCt 8 ProfCond 7.2.
Cooperatives for lawyer advertising and other intermediary organizations, SupCt 8 ProfCond 7.6.
False or misleading communications, SupCt 8 ProfCond 7.1.
Fields of practice, SupCt 8 ProfCond 7.4.
Firm names and letterheads, SupCt 8 ProfCond 7.5.
Intermediary organizations, SupCt 8 ProfCond 7.6.
Solicitation directed to specifically identified recipients, SupCt 8 ProfCond 7.3.
Letterheads.
Legal services, information about.
Firm names and letterheads, SupCt 8 ProfCond 7.5.
Maintaining integrity of profession, SupCt 8 ProfCond 8.1 to 8 ProfCond 8.5.
Material.
Defined, SupCt 8 ProfCond 1.0.
Materially.
Defined, SupCt 8 ProfCond 1.0.
Mental disability.
Representing clients under disability, SupCt 8 ProfCond 1.14.
Minors.
Representing clients under disability, SupCt 8 ProfCond 1.14.
Misconduct.
Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
Multijurisdictional practice of law, SupCt 8 ProfCond 5.5.
Disciplinary authority, SupCt 8 ProfCond 8.5.

ATTORNEYS AT LAW —Cont'd**Rules of professional conduct —Cont'd**

- Non-adjudicative proceedings.
 - Advocacy in non-adjudicative proceeding, SupCt 8 ProfCond 3.9.
- Nonclients, transactions with, SupCt 8 ProfCond 4.1 to 8 ProfCond 4.4.
 - Candor, SupCt 8 ProfCond 4.1.
- Confidential information inadvertently received by attorney relevant to representation, SupCt 8 ProfCond 4.4.
- Criminal charges.
 - Use of threat of criminal charges to gain advantage in civil cases, SupCt 8 ProfCond 4.4.
- Representation by counsel.
 - Communications with represented person, SupCt 8 ProfCond 4.2.
- Solicitation of potential clients for employment, SupCt 8 ProfCond 7.3.
- Third persons.
 - Respect for rights of third persons, SupCt 8 ProfCond 4.4.
- Unrepresented by counsel.
 - Dealing with unrepresented person, SupCt 8 ProfCond 4.3.
- Nonprofit and court-annexed limited legal services programs.
 - Conflicts of interest and disqualifications.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Orders.
 - Knowing noncompliance.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
- Organizational clients.
 - Representation of organization, SupCt 8 ProfCond 1.13.
- Partner.
 - Defined, SupCt 8 ProfCond 1.0.
- Prejudicing administration of justice.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
- Prepaid legal insurance providers.
 - Rules of professional conduct, SupCt 8 ProfCond 7.6.
- Pro bono publico representation, SupCt 8 ProfCond 6.1.
 - Emeritus attorneys, pro bono legal services by.
 - Compliance with rules, SupCt 50A.
- Promptness of attorney, SupCt 8 ProfCond 1.3.
- Property.
 - Safekeeping property, SupCt 8 ProfCond 1.15.
- Prosecutors.
 - Special responsibilities, SupCt 8 ProfCond 3.8.
- Prospective clients.
 - Duties towards prospective clients, SupCt 8 ProfCond 1.18.
- Publicity, SupCt 8 ProfCond 3.6.

ATTORNEYS AT LAW —Cont'd**Rules of professional conduct —Cont'd**

- Public service, SupCt 8 ProfCond 6.1 to 8 ProfCond 6.5.
 - Conflicts of interest.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Court-appointed representation.
 - Avoiding court appointment, SupCt 8 ProfCond 6.2.
- Disqualifications.
 - Applicability of provisions, SupCt 8 ProfCond 6.5.
- Legal services organization.
 - Membership in, SupCt 8 ProfCond 6.3.
- Pro bono publico representation, SupCt 8 ProfCond 6.1.
- Reform of law.
 - Activities affecting client interests, SupCt 8 ProfCond 6.4.
- Reasonable.
 - Defined, SupCt 8 ProfCond 1.0.
- Reasonable belief.
 - Defined, SupCt 8 ProfCond 1.0.
- Reasonably.
 - Defined, SupCt 8 ProfCond 1.0.
- Reasonably believes.
 - Defined, SupCt 8 ProfCond 1.0.
- Reasonably should know.
 - Defined, SupCt 8 ProfCond 1.0.
- Referral services, SupCt 8 ProfCond 7.6.
- Reporting professional misconduct, SupCt 8 ProfCond 8.3.
- Role of client and attorney, SupCt 8 ProfCond 1.2.
- Safekeeping property, SupCt 8 ProfCond 1.15.
- Sale of law practice, SupCt 8 ProfCond 1.17.
- Scope of representation, SupCt 8 ProfCond 1.2.
- Screened.
 - Defined, SupCt 8 ProfCond 1.0.
- Screening.
 - Defined, SupCt 8 ProfCond 1.0.
- Settlements.
 - Conflicts of interest.
 - Prohibited transactions, SupCt 8 ProfCond 1.8.
 - Scope of representation, SupCt 8 ProfCond 1.2.
- Solicitation of employment.
 - Directed to specifically identified recipients, SupCt 8 ProfCond 7.3.
- Potential clients, solicitation, SupCt 8 ProfCond 7.3.
- Specialization.
 - Communication about fields of practice, SupCt 8 ProfCond 7.4.
- Substantial.
 - Defined, SupCt 8 ProfCond 1.0.
- Substantially.
 - Defined, SupCt 8 ProfCond 1.0.

ATTORNEYS AT LAW —Cont'd**Rules of professional conduct —Cont'd**

Successive government and private employment, SupCt 8 ProfCond 1.11.

Terminating representation.

Declining representation, SupCt 8 ProfCond 1.16.

Third parties.

Evaluations for third party use, SupCt 8 ProfCond 2.3.

Trial publicity, SupCt 8 ProfCond 3.6.

Tribunal.

Candor towards tribunal, SupCt 8 ProfCond 3.3.

Decorum of tribunal.

Duties of attorney as to, SupCt 8 ProfCond 3.5.

Defined, SupCt 8 ProfCond 1.0.

Impartiality of tribunal.

Duties of attorney as to, SupCt 8 ProfCond 3.5.

Unauthorized practice of law, SupCt 8 ProfCond 5.5.

Violation of RPC.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.

Witnesses.

Attorney as witness, SupCt 8 ProfCond 3.7.

Writing.

Defined, SupCt 8 ProfCond 1.0.

Written.

Defined, SupCt 8 ProfCond 1.0.

Sale of law practice.

Rules of professional conduct, SupCt 8 ProfCond 1.17.

Settlements.

Rules of professional conduct.

Conflicts of interest.

Prohibited transactions, SupCt 8 ProfCond 1.8.

Scope of representation, SupCt 8 ProfCond 1.2.

Solicitation of employment.

Directed to specifically identified recipients, SupCt 8 ProfCond 7.3.

Intermediary organizations, SupCt 44.

Specialist certification.

Communication about fields of practice, SupCt 8 ProfCond 7.4.

Identification and certification of specialists, SupCt 21 §11.

State board of law examiners.

Administrator.

Duties, SupCt 7 §12.06.

Assistants to the board, SupCt 7 §12.09.

Composition, SupCt 7 §12.01.

Confidentiality of records and files, SupCt 7 §12.11.

Counsel for board, SupCt 7 §12.14.

Docket of proceedings, SupCt 7 §12.06.

Employees of board.

Salaries.

Board to fix, SupCt 7 §12.10.

ATTORNEYS AT LAW —Cont'd**State board of law examiners —Cont'd**

Executive director.

Administrative and other office assistance, SupCt 7 §12.08.

Appointment, SupCt 7 §12.07.

Duties, SupCt 7 §§12.06, 12.07.

Salary.

Board to fix, SupCt 7 §12.10.

Formal actions, SupCt 7 §12.04.

Cost, SupCt 7 §13.05.

Decisions of board, SupCt 7 §13.06.

Default, SupCt 7 §13.04.

Hearings, SupCt 7 §13.03.

Failure to appear.

Default, SupCt 7 §13.04.

Preliminary matters, SupCt 7 §13.08.

Informal disposition, SupCt 7 §13.07.

Motions and other matters preliminary to hearing, SupCt 7 §13.08.

Petitions to board, SupCt 7 §13.02.

Review of board decisions generally, SupCt 7 §§14.01 to 14.04.

Show cause orders, SupCt 7 §13.01.

Failure to respond.

Default, SupCt 7 §13.04.

Hearings. See within this subheading, "Formal actions."

Immunity, SupCt 7 §12.15.

Licensing of attorneys.

General provisions. See within this heading, "Licensing of attorneys."

Officers, SupCt 7 §12.02.

Qualifications of members, SupCt 7 §12.01.

Review of board decisions.

Costs, SupCt 7 §14.02.

Exhaustion of board remedies, SupCt 7 §14.03.

Failure to pass bar examination.

No review, SupCt 7 §14.04.

Petition for review, SupCt 7 §14.01.

Rules and regulations, SupCt 7 §12.05.

Seal of office, SupCt 7 §12.03.

Statements of policy, SupCt 7 §12.05.

Subpoena power, SupCt 7 §12.13.

Terms of members, SupCt 7 §12.01.

Waiver or modification of rule of court.

Board not empowered to waive or modify, SupCt 7 §12.12.

Subpoenas.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

Substance abuse.

Conditional admission of rehabilitating applicants, SupCt 7 §10.05.

Lawyer assistance program, SupCt 33.

Supervised practice prior to admission by examination score, SupCt 7 §10.04.**Surrender of law license, SupCt 7 §15.01.**

Acceptance of surrender, effect of order, SupCt 7 §15.03.

Supreme court decision on petition to surrender, SupCt 7 §15.02.

ATTORNEYS AT LAW —Cont'd

Suspension.

General provisions. See within this heading, "Discipline."

Tennessee law course.

Required for admission to practice law, SupCt 7 §1.07.

Military spouses, temporary license and admission, SupCt 7 §10.06.

Tennessee lawyer assistance program,
SupCt 33.

Trust accounts.

Interest on lawyers' trust accounts, SupCt 43.

Unauthorized practice of law, SupCt 8
ProfCond 5.5.

Multijurisdictional practice of law, SupCt 8
ProfCond 5.5.

Disciplinary authority, SupCt 8 ProfCond
8.5.

Witnesses.

Rules of professional conduct.

Attorney as witness, SupCt 8 ProfCond
3.7.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

ATTORNEYS' FEES.

Contingent fees.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

Court-appointed attorneys, SupCt 13.

Mental health cases, SupCt 15.

Parole revocation cases, SupCt 16.

Criminal cases.

Contingent fees.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

Division of fees, SupCt 8 ProfCond 1.5.

Domestic relations.

Contingent fees.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

**Indigent defendants, counsel appointed
for.**

Cap on hours billed, SupCt 13.

Indigent persons.

Adoption proceedings where guardian ad
litem appointed.

Compensation of guardian ad litem,
SupCt 13.

Fees of guardian ad litem, SupCt 13.

Reasonable fees.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

Firms.

Sharing fees with nonattorneys, SupCt 8
ProfCond 5.4.

B

**BANKS AND FINANCIAL
INSTITUTIONS.**

Attorney discipline.

Bank accounts.

Verification of accuracy and integrity of
accounts, SupCt 9 §35.

BAR EXAMINATION.

Attorneys at law.

Licensing of attorneys.

See ATTORNEYS AT LAW.

BOARD OF LAW EXAMINERS.

State board of law examiners.

See ATTORNEYS AT LAW.

BOARDS AND COMMISSIONS.

Judges.

Code of judicial conduct.

Governmental bodies and officials.

Appearances before and consultation
with.

Restrictions on appearances and
consultations, SupCt 10

JudCondCanon 3 (3.2).

Appointment to government
committees, boards, etc.

Conflicts of interest, SupCt 10
JudCondCanon 3 (3.4).

BRIEFS.

**Certification of questions of state law
from federal court,** SupCt 23 §7.

BROADCASTING.

Media coverage of court proceedings,
SupCt 30.

C

CAPITAL CASES.

Appeals, SupCt 12.

Appointment of counsel in capital cases,
SupCt 13.

Execution date.

Setting, SupCt 12.

Trial judge report, SupCt 12.

CASE COUNTING, SupCt 11 §II.

CASE EVALUATION.

Attorneys at law.

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

CENSURE.

Attorney discipline.

Public censure.

Types of discipline, SupCt 9 §12.

CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURT.

- Arguments**, SupCt 23 §7.
- Briefs**, SupCt 23 §7.
- Costs**, SupCt 23 §10.
- Dismissal of certification**, SupCt 23 §9.
- Generally**, SupCt 23 §1.
- Method**, SupCt 23 §2.
- Opinions**, SupCt 23 §8.
- Oral argument**, SupCt 23 §7.
- Order**, SupCt 23 §2.
 - Contents, SupCt 23 §3.
 - Preparation, SupCt 23 §4.
 - Service, SupCt 23 §4.
- Parties**, SupCt 23 §6.
 - Names of parties.
 - Certification order to include, SupCt 23 §3.

- Record may be required**, SupCt 23 §5.
- Service of process**.
 - Order, SupCt 23 §4.
- When certified**, SupCt 23 §1.

CHARITIES.

- Judges**.
 - Code of judicial conduct.
 - Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10
 - JudCondCanon 3 (3.7).

CHIEF JUSTICE.

- Term**, SupCt 32.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.

- Collaborative family law**.
 - Child abuse reporting.
 - Mandatory reporting not affected by provisions, SupCt 53 §13.

CHILD CUSTODY.

- Guardian ad litem**.
 - Appointment of guardian ad litem in custody proceedings, SupCt 40A.
 - Access to child, SupCt 40A §7.
 - Appeals, SupCt 40A §12.
 - Applicability of rule, SupCt 40A §2.
 - Criteria for appointment, SupCt 40A §3.
 - Definitions, SupCt 40A §1.
 - Duration, SupCt 40A §5.
 - Duties of guardian ad litem, SupCt 40A §8.
 - Effective date of provisions, SupCt 40A §13.
 - Expediting proceedings, SupCt 40A §10.
 - Fees and expenses, SupCt 40A §11.
 - Information concerning child.
 - Access of guardian to information, SupCt 40A §7.
 - Orders, SupCt 40A §4.
 - Participation in custody proceedings, SupCt 40A §9.
 - Rights of guardian ad litem, SupCt 40A §8.

CHILD CUSTODY —Cont'd

- Guardian ad litem —Cont'd**
 - Appointment of guardian ad litem in custody proceedings —Cont'd
 - Role of guardian ad litem, SupCt 40A §6.
 - Participation of guardian in custody proceedings, SupCt 40A §9.

CHILD SUPPORT.

- Magistrates**.
 - Appointment of magistrate in child support case, SupCt 22.

CHOICE OF LAW.

- Attorneys at law**.
 - Rules of professional conduct.
 - Discipline, SupCt 8 ProfCond 8.5.

CLERK OF SUPREME COURT.

- Duties**.
 - Publication of opinions, SupCt 4.

CLERKS OF COURT.

- Alternative dispute resolution**.
 - Retirement or resignation of clerk pending.
 - Rule 31 mediators, restrictions on listing as, SupCt 31 §14.

Appeals.

- E-filing.
 - Definition of clerk, SupCt 46 §1.01.

CLIENT-LAWYER RELATIONSHIP.

- Rules of professional conduct**, SupCt 8
 - ProfCond 1.0 to 8 ProfCond 1.18.

COLLABORATIVE FAMILY LAW, SupCt 53 §§1 to 22.

- Applicability of rules**, SupCt 53 §3.

Attorneys.

- Appropriateness of process.
 - Assessment by prospective collaborative lawyer, SupCt 53 §14.
- Collaborative lawyer.
 - Defined, SupCt 53 §2.
- Disqualification of collaborative lawyer and lawyers in associated firm, SupCt 53 §9.
 - Exception for low-income parties, SupCt 53 §10.
 - Government entity as party, SupCt 53 §11.
- Family violence.
 - Inquiries by prospective collaborative lawyer, SupCt 53 §15.
- Professional responsibility.
 - Standards not affected by provisions, SupCt 53 §13.

Child abuse reporting.

- Mandatory reporting not affected by provisions, SupCt 53 §13.

Confidentiality of communications, SupCt 53 §16.

- Definition of collaborative family law communication, SupCt 53 §2.

Courts.

- Defined, SupCt 53 §2.
- Proceedings pending before court, SupCt 53 §6.

COLLABORATIVE FAMILY LAW —Cont'd**Courts —Cont'd**

Status report.

Court may require, SupCt 53 §6.

Definitions, SupCt 53 §2.**Disclosures by parties**, SupCt 53 §12.**Effective date of rules**, SupCt 53 §22.**Emergency orders.**

Permitted, SupCt 53 §7.

Family violence.

Inquiries by prospective collaborative lawyer, SupCt 53 §15.

Government entities.

Defined, SupCt 53 §11.

When government entity is party, SupCt 53 §11.

Nature of collaborative process, SupCt 53 §1.**Other alternative dispute resolution.**

Permitted, SupCt 53 §21.

Participation agreements.

Definition of collaborative family law participation agreements, SupCt 53 §2.
Noncompliance.

Court's authority, SupCt 53 §20.

Requirements, SupCt 53 §4.

Privileged communications.

Definition of collaborative family law communication, SupCt 53 §2.

Disclosure of communications, privilege against, SupCt 53 §17.

Limits of privilege, SupCt 53 §19.

Waiver and preclusion of privilege, SupCt 53 §18.

Process.

Appropriateness.

Assessment, SupCt 53 §14.

Beginning of process, SupCt 53 §5.

Concluding process, SupCt 53 §5.

Definition of collaborative family law process, SupCt 53 §2.

Professional responsibility.

Standards not affected by provisions, SupCt 53 §13.

Settlements.

Written settlement agreement.

Effect, SupCt 53 §8.

COMPROMISE AND SETTLEMENT.**Alternative dispute resolution.**

Judicial settlement conferences.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §16.

Defined, SupCt 31A §2.

Collaborative family law.

Written settlement agreement.

Effect, SupCt 53 §8.

Judges.

Code of judicial conduct.

Encouraging without coercing, SupCt 10 JudCondCanon 2 (2.6).

CONFIDENTIALITY OF INFORMATION.**Alternative dispute resolution.**

Conduct or statements made during proceedings, SupCt 31 §7.

Rule 31A ADR proceedings, SupCt 31A §7.

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §7.

Rule 31A neutrals.

Obligations, SupCt 31A §10.

Rule 31 mediators.

Obligations, SupCt 31 §10.

Attorney discipline.

Confidentiality of proceedings, SupCt 9 §32.

Attorneys at law.

Rules of professional conduct, SupCt 8 ProfCond 1.6.

Nonclients, transactions with.

Confidential information inadvertently received by attorney relevant to representation, SupCt 8 ProfCond 4.4.

Prospective clients.

Duties towards prospective clients, SupCt 8 ProfCond 1.18.

State board of law examiners.

Records and files, SupCt 7 §12.11.

Board of law examiners.

Records and files, SupCt 7 §12.11.

Collaborative family law.

Confidentiality of communications, SupCt 53 §16.

Law schools.

Tennessee-approved law schools.

Approval and evaluation procedures, confidentiality, SupCt 7 §17.07.

State board of law examiners.

Records and files, SupCt 7 §12.11.

CONFLICT OF LAWS.**Attorneys at law.**

Rules of professional conduct.

Discipline.

Choice of law, SupCt 8 ProfCond 8.5.

CONFLICTS OF INTEREST.**Alternative dispute resolution.**

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §§2, 6.

Rule 31A neutrals.

Disclosures, SupCt 31A §10.

Rule 31 mediators.

Disclosures, SupCt 31 §10.

Attorney discipline.

Board.

Recusal of members, SupCt 9 §4.

District committees.

Recusal, SupCt 9 §6.

CONFLICTS OF INTEREST —Cont'd**Attorneys at law.**

Law schools.

Approval.

Tennessee law schools.

Conflicts of interest of board

members, fact finders, site

evaluation teams, etc, SupCt 7

§17.10.

Rules of professional conduct, SupCt 8

ProfCond 1.7.

Current clients.

Restrictions on transactions, SupCt 8

ProfCond 1.8.

Former clients, SupCt 8 ProfCond 1.9.

Former judges or arbitrators, SupCt 8

ProfCond 1.12.

Imputed disqualification, SupCt 8

ProfCond 1.10.

Prohibited transactions, SupCt 8

ProfCond 1.8.

Prospective clients.

Duties towards prospective clients,

SupCt 8 ProfCond 1.18.

Public service.

Applicability of provisions, SupCt 8

ProfCond 6.5.

Successive government and private

employment, SupCt 8 ProfCond 1.11.

Judges.

Code of judicial conduct, SupCt 10

JudCondCanons 3 (3.1) to (3.15).

See JUDGES.

CONSENT.**Attorney discipline.**

Consent discipline, SupCt 9 §24.

Disbarment by consent.

Attorneys under disciplinary

investigation or prosecution, SupCt

9 §23.

CONSERVATORS.**Judges.**

Code of judicial conduct.

Fiduciary position appointments, conflicts

of interest, SupCt 10 JudCondCanon

3 (3.8).

CONTEMPT.**Appointment of counsel when jeopardy of incarceration exists, SupCt 13.****CONTINUING EDUCATION.****Alternative dispute resolution.**

Professional conduct for rule 31 mediators

and rule 31A neutrals, standards,

SupCt 31 Appx A §11.

Rule 31 mediators, SupCt 31 §15.

Attorneys at law.

Continuing legal education, SupCt 21 §§1 to 11.

See ATTORNEYS AT LAW.

CONTRACTS.**Attorneys at law.**

Indigent persons, representation.

Fixed fee representation, SupCt 13.

CONTRACTS —Cont'd**Collaborative family law.**

Participation agreements.

Definition of collaborative family law

participation agreements, SupCt 53

§2.

Noncompliance.

Court's authority, SupCt 53 §20.

Requirements, SupCt 53 §4.

CONVICTIONS.**Attorney discipline.**

Conviction of attorney of crime, SupCt 9

§22.

Serious crime.

Conviction of attorney of crime, SupCt 9

§22.

Grounds for discipline, SupCt 9 §11.

Evidence.

Exculpation of convict.

Rules of professional conduct.

Prosecutors.

Special responsibilities of

prosecutors, SupCt 8 ProfCond

3.8.

COOPERATIVES FOR LAWYER**ADVERTISING, SupCt 44.****Rules of professional conduct, SupCt 8**

ProfCond 7.6.

CORPORATIONS.**Attorneys at law.**

Rules of professional conduct.

Organizational clients.

Representation of organization, SupCt

8 ProfCond 1.13.

Judges.

Code of judicial conduct.

Conflicts of interest.

Financial, business, remunerative, etc,

activities, restrictions, SupCt 10

JudCondCanon 3 (3.11).

COSTS.**Alternative dispute resolution, SupCt 31 §8.**

Rule 31A ADR proceedings, SupCt 31A §8.

Attorney discipline.

Assessment of costs against person subject to discipline, SupCt 9 §31.

Reinstatement, SupCt 9 §30.

Attorneys at law.

State board of law examiners.

Formal actions, SupCt 7 §13.05.

Review of board decisions, SupCt 7

§14.02.

Certification of questions of state law from federal court, SupCt 23 §10.**Foreign language interpreters.**

Cost of interpreter/translator services,

SupCt 42.

Mental health.

Reimbursement of costs in mental health proceedings, SupCt 15.

COSTS —Cont'd**Translators.**

Cost of interpreter/translator services,
SupCt 42.

COURT-APPOINTED ROSTER.**Rules of professional conduct.**

Public service.

Avoiding court appointment, SupCt 8
ProfCond 6.2.

Trial courts to maintain, SupCt 13.

COURT MANAGEMENT.**Data collection in civil and criminal courts.**

Uniform procedures, SupCt 11 §II.

COURT OF APPEALS.**Disasters.**

Continuity of operation of appellate courts
in event of disaster, SupCt 49.

Emergencies.

Continuity of operation of appellate courts
in event of disaster, SupCt 49.

Opinions.

Publication of opinions of intermediate
appellate courts.
Criteria, SupCt 4.

COURT OF CRIMINAL APPEALS.**Disasters.**

Continuity of operation of appellate courts
in event of disaster, SupCt 49.

Emergencies.

Continuity of operation of appellate courts
in event of disaster, SupCt 49.

Opinions.

Publication of opinions of intermediate
appellate courts.
Criteria, SupCt 4.

COURTS OF GENERAL SESSIONS.**Judges.**

Alternative dispute resolution.
Part-time judicial officers.
Rule 31 mediators, listing as, SupCt 31
§14.

COVENANTS NOT TO COMPETE.**Attorneys at law.**

Rules of professional conduct.
Firm.
Restrictions on right to practice, SupCt
8 ProfCond 5.6.

CRIMES AND OFFENSES.**Attorneys at law.**

Rules of professional conduct.
Conduct constituting professional
misconduct, SupCt 8 ProfCond 8.4.

Attorneys' contingent fees in criminal cases.

Rules of professional conduct, SupCt 8
ProfCond 1.5.

Deferral of further proceedings.

Probation.
Order of deferral, SupCt 17A.

CRIMES AND OFFENSES —Cont'd**Foreign language interpreters.**

Ethics, rules of, SupCt 41.

D**DEATH PENALTY.****Appeals,** SupCt 12.

Appointment of counsel in capital cases,
SupCt 13.

Execution date.

Setting, SupCt 12.

Trial judge report, SupCt 12.

DEFERRAL OF FURTHER CRIMINAL PROCEEDINGS.**Knowledge.**

Judicial conduct code, SupCt 10
JudCondTerm.

Probation.

Order of deferral, SupCt 17A.

DEFINITIONS.**Abuse or neglect proceedings.**

Guardian ad litem appointment in custody
proceedings, SupCt 40A §1.

Active practice of law.

Pro bono legal services by emeritus
attorneys, SupCt 50A.

ADRC.

Supreme court rules governing alternative
dispute resolution, SupCt 31 §2.

Aggregate.

Judicial conduct code, SupCt 10
JudCondTerm.

Alternative dispute resolution commission.

Supreme court rules governing alternative
dispute resolution, SupCt 31 §2.

Appellate court.

E-filing rule, SupCt 46 §1.01.

Appropriate authority.

Judicial conduct code, SupCt 10
JudCondTerm.

Approved law school.

Attorneys, law student practice, SupCt 7
§10.03.

Approved legal assistance organizations.

Pro bono legal services by emeritus
attorneys, SupCt 50A.

Attorney discipline, SupCt 9 §2.**Attorneys at law.**

Rules of professional conduct, SupCt 8
ProfCond 1.0.

Baccalaureate degree.

Supreme court rules governing alternative
dispute resolution, SupCt 31 §2.

Case evaluation.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.

Certificate of compliance.

E-filing rule, SupCt 46 §1.01.

Clerks.

E-filing rule, SupCt 46 §1.01.

DEFINITIONS —Cont'd**Collaborative family law communications.**

Collaborative family law, SupCt 53 §2.

Collaborative family law matter.

Collaborative family law, SupCt 53 §2.

Collaborative family law participation agreements.

Collaborative family law, SupCt 53 §2.

Collaborative family law process, SupCt 53 §2.**Collaborative lawyer.**

Collaborative family law, SupCt 53 §2.

Contributions.

Judicial conduct code, SupCt 10

JudCondTerm.

Court-approved forms, SupCt 52.**Court-ordered mediation.**

Alternative dispute resolution, SupCt 31 §2.

Courts.

Alternative dispute resolution, supreme court rules, SupCt 31A §2.

Collaborative family law, SupCt 53 §2.

E-filing rule, SupCt 46 §1.01.

Supreme court rules governing alternative dispute resolution, SupCt 31 §2.

Custody proceedings.

Guardian ad litem appointment in custody proceedings, SupCt 40A §1.

Dating relationship.

Collaborative family law, family violence inquiry, SupCt 53 §15.

Days.

Alternative dispute resolution, supreme court rules, SupCt 31 §2, SupCt 31A §2.

De minimis.

Judicial conduct code, SupCt 10

JudCondTerm.

Director.

Attorneys, law student practice, SupCt 7 §10.03.

Dishonest conduct.

Lawyers' fund for client protection, SupCt 25 §1.

Documents.

E-filing rule, SupCt 46 §1.01.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

Domestic partners.

Judicial conduct code, SupCt 10

JudCondTerm.

Economic interest.

Judicial conduct code, SupCt 10

JudCondTerm.

E-file.

E-filing rule, SupCt 46 §1.01.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

E-filer.

E-filing rule, SupCt 46 §1.01.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

DEFINITIONS —Cont'd**E-filing, SupCt 46 §1.01.**

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

E-filing fees.

E-filing rule, SupCt 46 §1.01.

E-filing system.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

Electronic signatures.

E-filing rule, SupCt 46 §1.01.

Eligible civil action.

Supreme court rules governing alternative dispute resolution, SupCt 31 §2, SupCt 31A §2.

E-serve.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

E-service.

E-filing rule, SupCt 46 §1.01.

Electronic service of papers E-filed pursuant to local rules of court, SupCt 46(A).

Experiential learning programs.

Attorneys.

Admission to practice, SupCt 7 §10.02.

Law student practice, SupCt 7 §10.03.

Family violence.

Collaborative family law, family violence inquiry, SupCt 53 §15.

Fiduciary.

Judicial conduct code, SupCt 10

JudCondTerm.

Financial institutions.

Attorney discipline, trust account abuse prevention, SupCt 9 §35.

Foreign lawyer.

Attorneys at law, registration of in-house council, SupCt 7 §10.01.

Governmental agency or agencies.

Attorneys, law student practice, SupCt 7 §10.03.

Government entity.

Collaborative family law, SupCt 53 §11.

Graduate degree.

Supreme court rules governing alternative dispute resolution, SupCt 31 §2.

Guardians ad litem.

Custody proceedings, appointment, SupCt 40A §1.

Juvenile court proceedings, guidelines for guardians, SupCt 40.

Household.

Collaborative family law, family violence inquiry, SupCt 53 §15.

Impartial.

Judicial conduct code, SupCt 10

JudCondTerm.

Impartiality.

Judicial conduct code, SupCt 10

JudCondTerm.

DEFINITIONS —Cont'd**Impartially.**

Judicial conduct code, SupCt 10
JudCondTerm.

Impending matters.

Judicial conduct code, SupCt 10
JudCondTerm.

Impropriety.

Judicial conduct code, SupCt 10
JudCondTerm.

Independence.

Judicial conduct code, SupCt 10
JudCondTerm.

Integrity.

Judicial conduct code, SupCt 10
JudCondTerm.

Intermediary organization, SupCt 8

ProfCond 7.6, 44.

Judicial candidates.

Judicial conduct code, SupCt 10
JudCondTerm.

Judicial officers.

Alternative dispute resolution, SupCt 31 §2,
SupCt 31A §2.

Judicial settlement conference.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.
Judicial conduct code, SupCt 10
JudCondTerm.

Knowingly.

Judicial conduct code, SupCt 10
JudCondTerm.

Known.

Judicial conduct code, SupCt 10
JudCondTerm.

Law firm.

Collaborative family law, SupCt 53 §2.

Lawyer.

Lawyers' fund for client protection, SupCt
25 §1.

Media guidelines, SupCt 30.**Member of candidate's family.**

Judicial conduct code, SupCt 10
JudCondTerm.

Member of household.

Collaborative family law, family violence
inquiry, SupCt 53 §15.

Member of judge's family.

Judicial conduct code, SupCt 10
JudCondTerm.

Member of judge's family residing in judge's household.

Judicial conduct code, SupCt 10
JudCondTerm.

Mini-trial.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.

Non-binding arbitration.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.

Nonparty participants.

Collaborative family law, SupCt 53 §2.

Nonpublic information.

Judicial conduct code, SupCt 10
JudCondTerm.

DEFINITIONS —Cont'd**Notice of dishonor.**

Attorney discipline, trust account abuse
prevention, SupCt 9 §35.

Order of reference.

Supreme court rules governing alternative
dispute resolution, SupCt 31 §2, SupCt
31A §2.

Parties.

Collaborative family law, SupCt 53 §2.

PDF.

E-filing rule, SupCt 46 §1.01.

Pending matters.

Judicial conduct code, SupCt 10
JudCondTerm.

Personally solicit.

Judicial conduct code, SupCt 10
JudCondTerm.

Person or entity financially unable to afford counsel.

Attorneys, law student practice, SupCt 7
§10.03.

Political organizations.

Judicial conduct code, SupCt 10
JudCondTerm.

Portable document format.

E-filing rule, SupCt 46 §1.01.

Post-conviction procedure, SupCt 28 §2.**Pro bono emeritus attorneys.**

Pro bono legal services by emeritus
attorneys, SupCt 50A.

Proceedings.

Collaborative family law, SupCt 53 §2.

Properly payable.

Attorney discipline, trust account abuse
prevention, SupCt 9 §35.

Prospective parties.

Collaborative family law, SupCt 53 §2.

Provide legal services.

Attorneys, law student practice, SupCt 7
§10.03.

Public election.

Judicial conduct code, SupCt 10
JudCondTerm.

Records.

Collaborative family law, SupCt 53 §2.

Registered user.

E-filing rule, SupCt 46 §1.01.

Registered users.

Electronic service of papers E-filed
pursuant to local rules of court, SupCt
46(A).

Related to a collaborative family law matter.

Collaborative family law, SupCt 53 §2.

Rule 31A ADR proceedings.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.

Rule 31A neutrals.

Alternative dispute resolution, supreme
court rules, SupCt 31A §2.

Rule 31 mediation.

Supreme court rules governing alternative
dispute resolution, SupCt 31 §2.

DEFINITIONS —Cont'd**Rule 31 mediator.**

Supreme court rules governing alternative dispute resolution, SupCt 31 §2.

Summary jury trial.

Alternative dispute resolution, supreme court rules, SupCt 31A §2.

Supervising attorneys.

Pro bono legal services by emeritus attorneys, SupCt 50A.

Terms of use agreement.

E-filing rule, SupCt 46 §1.01.

Third degree of relationship.

Judicial conduct code, SupCt 10 JudCondTerm.

Transaction receipts.

E-filing rule, SupCt 46 §1.01.

Universally acceptable as legally sufficient.

Court-approved forms, SupCt 52.

User guide.

E-filing rule, SupCt 46 §1.01.

Waiver of parental consent for abortions by minors, SupCt 24.**DEPENDENT AND NEGLECTED CHILDREN.****Appointment of counsel, SupCt 13.****DEPOSITIONS.****Electronic recordings of court proceedings, SupCt 26 §2.****DISABILITIES, PERSONS WITH.****Americans with disabilities act.**

Assistance to courts with compliance, SupCt 45.

Attorney discipline.

Disability inactive status, SupCt 9 §27.

Notice to clients, adverse parties and other counsel, SupCt 9 §28.

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

DISASTERS.**Continuity of operation of courts, SupCt 49.****Court of appeals.**

Continuity of operation of appellate courts in event of disaster, SupCt 49.

Court of criminal appeals.

Continuity of operation of appellate courts in event of disaster, SupCt 49.

Determination of major disaster.

Legal services, providing after determination, SupCt 47.

Supreme court.

Continuity of operation of appellate courts in event of disaster, SupCt 49.

DISBARMENT.**Attorney discipline.**

Consent disbarment for attorneys under disciplinary investigation or prosecution, SupCt 9 §23.

DISBARMENT —Cont'd**Attorney discipline —Cont'd**

Receiver attorneys, appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

Reinstatement not permitted for attorneys disbarred from July 2020 on, SupCt 9 §30.

Types of discipline, SupCt 9 §12.

DISCOVERY.

Attorney discipline, SupCt 9 §19.

Post-conviction procedure, SupCt 28 §7.

DISCRIMINATION.**Attorneys at law.**

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

Judges.

Code of judicial conduct.

Affiliation with discriminatory organizations, SupCt 10 JudCondCanon 3 (3.6).

DISEASES.**Attorney discipline.**

Disability resulting from age, disease, disorder, etc.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

DIVORCE.

Court-approved forms, SupCt 52, SupCt Appxs A, B.

DOMESTIC ABUSE.**Alternative dispute resolution.**

Rule 31 mediators.

Family cases.

Designation as specially trained in domestic violence issues, SupCt 31 §14.

DOMESTIC RELATIONS CASES.**Alternative dispute resolution.**

Family cases.

Rule 31 mediators.

Qualifications and training, SupCt 31 §14.

Attorneys' fees.

Contingent fees.

Rules of professional conduct, SupCt 8 ProfCond 1.5.

Collaborative family law, SupCt 53 §§1 to 22.

See COLLABORATIVE FAMILY LAW.

E**EDUCATION.****Attorneys at law.**

Continuing legal education and specialist certification.

See ATTORNEYS AT LAW.

EDUCATION —Cont'd**Attorneys at law —Cont'd**

Licensing of attorneys.

Educational requirements for admission.

See ATTORNEYS AT LAW.

Judges.

Code of judicial conduct.

Charitable, religious, educational, etc,
organizations and activities,
participation, SupCt 10
JudCondCanon 3 (3.7).**Parenting plans.**Divorcing parent education and mediation
fund, SupCt 38 §3.**E-FILING.****Electronic service of papers E-filed
pursuant to local rules of court,**
SupCt 46(A).**E-FILING FOR APPEALS, SupCt 46.****Appellate courts.**

Defined, SupCt 46 §1.01.

Applicability of rule, SupCt 46 §1.02.**Certificate of compliance.**

Defined, SupCt 46 §1.01.

Clerks.

Defined, SupCt 46 §1.01.

Review by clerk, SupCt 46 §3.01.

Courts.

Defined, SupCt 46 §1.01.

Documents filed by court, SupCt 46 §3.01.

E-service, SupCt 46 §4.02.

Definitions, SupCt 46 §1.01.**Documents.**

Defined, SupCt 46 §1.01.

Format, SupCt 46 §3.02.

Effective date of rule, SupCt 46 Intro.**Effect of filing, SupCt 46 §3.01.****E-file.**

Defined, SupCt 46 §1.01.

E-filer.

Defined, SupCt 46 §1.01.

E-filing.

Defined, SupCt 46 §1.01.

E-filing fees.

Defined, SupCt 46 §1.01.

Payment of fees, SupCt 46 §3.03.

Electronic signatures.

Defined, SupCt 46 §1.01.

Registered users' signatures, SupCt 46
§3.04.**E-service.**Automatic service by e-filing system, SupCt
46 §4.01.

Defined, SupCt 46 §1.01.

Documents filed by court, SupCt 46 §4.02.

Filing fees.

Definition of e-filing fees, SupCt 46 §1.01.

Payment of filing fees, SupCt 46 §3.03.

Format of documents, SupCt 46 §3.02.**Outage of e-filing system.**

Technical failures, effect, SupCt 46 §5.02.

PDF.

Defined, SupCt 46 §1.01.

E-FILING FOR APPEALS —Cont'd**Permitted electronic filings.**Applicability of rule generally, SupCt 46
§1.02.**Portable document format.**

Defined, SupCt 46 §1.01.

Registered user.

Authority to e-file, SupCt 46 §2.01.

Contact information.

Updating, SupCt 46 §2.03.

Defined, SupCt 46 §1.01.

Registration of registered users, SupCt 46
§2.02.

Signatures, SupCt 46 §3.04.

Technical failures, effect.

Nunc pro tunc.

Motion to file document nunc pro tunc,
SupCt 46 §5.01.

Outage of e-filing system, SupCt 46 §5.02.

Terms of use agreements.

Defined, SupCt 46 §1.01.

Time of filing, SupCt 46 §3.01.**Transaction receipts.**

Defined, SupCt 46 §1.01.

User guide.Clerk to provide to registered users, SupCt
46.2.04.

Defined, SupCt 46 §1.01.

ELECTIONS.**Candidates.**

Judges.

Code of judicial conduct.

Elections, political or campaign
activity, SupCt 10 JudCondCanons
4 (4.1) to (4.5).**Judges.**

Code of judicial conduct.

Elections, political or campaign activity,
SupCt 10 JudCondCanons 4 (4.1) to
(4.5).**ELECTRONIC RECORDINGS OF COURT
PROCEEDINGS.****Appeals.**

Procedure on appeal, SupCt 26 §4.

Procedure when filing notice of appeal,
SupCt 26 §3.**Depositions, SupCt 26 §2.****Duplicate copies, SupCt 26 §2.****Exhibits.**

List, SupCt 26 §2.

Local procedures.

Establishment, SupCt 26 §5.

Official record.Electronic recording considered official
record of proceedings, SupCt 26 §2.**Scope of order, SupCt 26 §1.****Trial courts.**"Transcript" to include videotaped
recording, SupCt 26 §2.**Trial log, SupCt 26 §2.****EMERGENCIES.****Collaborative family law.**

Emergency orders.

Permitted, SupCt 53 §7.

EMERGENCIES —Cont'd

Continuity of operation of courts, SupCt 49.

Court of appeals.

Continuity of operation of appellate courts in event of disaster, SupCt 49.

Court of criminal appeals.

Continuity of operation of appellate courts in event of disaster, SupCt 49.

Determination of major disaster.

Legal services, providing after determination, SupCt 47.

Supreme court.

Continuity of operation of appellate courts in event of disaster, SupCt 49.

EMPLOYERS AND EMPLOYEES.**Attorneys at law.**

Multijurisdictional practice.
Disciplinary authority, SupCt 8 ProfCond 8.5.

Services provided by attorney for employer, SupCt 8 ProfCond 5.5.

ETHICS.**Alternative dispute resolution.**

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §§1 to 14.
See ALTERNATIVE DISPUTE RESOLUTION.

Attorney discipline.

Ethics opinions.
Periodic issuance, SupCt 9 §5.

Attorneys at law.

Code of professional responsibility.
See ATTORNEYS AT LAW.
Rules of professional conduct, SupCt 8 ProfCond 1.0 to 8 ProfCond 8.5.
See ATTORNEYS AT LAW.

Foreign language interpreters, SupCt 41.**Judicial ethics opinions, SupCt 10A.****ETHNICITY.****Discrimination.**

Attorneys at law.
Rules of professional conduct.
Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

EVIDENCE.**Alternative dispute resolution.**

Conduct or statements made during proceedings.
Rule 31A ADR proceedings, SupCt 31A §7.

Inadmissible evidence, SupCt 31 §7.

Attorney discipline.

Applicability of rules of evidence, SupCt 9 §34.

Convictions.

Exculpation of convict.
Rules of professional conduct.
Prosecutors.
Special responsibilities of prosecutors, SupCt 8 ProfCond 3.8.

EVIDENCE —Cont'd**Exculpatory evidence.**

Rules of professional conduct.
Prosecutors.
Special responsibilities, SupCt 8 ProfCond 3.8.

EXECUTION DATE.

Setting execution date, SupCt 12.

EXECUTORS AND ADMINISTRATORS.**Attorneys at law.**

Rules of professional conduct.
Fiduciary defined, SupCt 8 ProfCond 1.0.

Judges.

Code of judicial conduct.
Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

EXHIBITS.**Electronic recordings of court proceedings.**

Exhibit list, SupCt 26 §2.

Size and format of papers filed in state courts, SupCt 36.**F****FAMILY VIOLENCE.****Collaborative family law.**

Inquiries by prospective collaborative lawyer, SupCt 53 §15.

FEDERAL COURTS.**Certification of questions of state law from federal court, SupCt 23.**

See CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURT.

Federal habeas corpus relief.

Exhaustion of state remedies, SupCt 39.

FEES.**Alternative dispute resolution.**

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §9.

Attorney discipline.

Registration fee.
Assessment of attorneys, SupCt 9 §10.

Attorneys at law.

Code of professional responsibility.
See ATTORNEYS AT LAW.

E-filing.

Definition of e-filing fees, SupCt 46 §1.01.
Payment of filing fees, SupCt 46 §3.03.

Guardians ad litem.

Custody proceedings, SupCt 40A §11.

Mental health.

Reimbursement of costs in mental health proceedings, SupCt 15.

FELONIES.**Appointment of counsel where jeopardy of incarceration exists, SupCt 13.**

FOREIGN LANGUAGE INTERPRETERS.**Ethics, rules of**, SupCt 41.**Standards for court interpreters**, SupCt 42.**FOREIGN STATES OR JURISDICTIONS.****Attorney discipline.**

Reciprocal discipline, SupCt 9 §25.

FORMS.**Abortions.**

Waiver of parental consent for abortions by minors, SupCt 24.

Court-approved forms, SupCt 52.**Divorce.**

Children involved, SupCt Appx B.

Children not involved, SupCt Appx A.

Indigency affidavits, SupCt 13.

Uniform civil affidavit of indigency, SupCt 29.

Judgment documents, SupCt 17.**Post-conviction procedure.**

Certification of counsel, SupCt 28 Appx C.

Indigency, affidavit of, SupCt 28 Appxs B, E.

Motion to reopen, SupCt 28 Appx D.

Pauper's oath, SupCt 28 Appxs B, E.

Petitions, SupCt 28 Appx A.

Preliminary order.

Colorable claim, SupCt 28 Appx F.

No colorable claim, SupCt 28 Appx G.

Scheduling order, SupCt 28 Appx H.

Reports.

Murder.

First degree murder.

Trial judge's report, SupCt 12.

Research assistants.

Certificate, SupCt 5.

Substitute judge consent form, SupCt 11 VII.**FRAUD.****Attorneys at law.**

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.

Definition of fraud or fraudulent, SupCt 8 ProfCond 1.0.

Scope of representation, SupCt 8 ProfCond 1.2.

Foreign language interpreters.

Ethics, rules of, SupCt 41.

FRIVOLOUS CLAIMS.**Attorneys at law.**

Rules of professional conduct.

Advocacy role of attorney, SupCt 8 ProfCond 3.1.

FUNDS.**Divorcing parent education and mediation fund**, SupCt 38.**Lawyers' fund for client protection**, SupCt 25.**G****GENDER IDENTITY.****Discrimination.**

Attorneys at law.

Rules of professional conduct.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

GIFTS.**Judges.**

Code of judicial conduct.

Conflicts of interest.

Gifts, loans, etc, accepting and reporting, SupCt 10

JudCondCanon 3 (3.13).

Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).

GUARDIAN AD LITEM.**Adoption.**

Attorney representation of indigent parties.

Advice by court to party without counsel as to right to be represented, SupCt 13.

Fees.

Presumption that fee equally divided between parties, SupCt 13.

Appointment, SupCt 13.**Child custody.**

Appointment of guardian ad litem in custody proceedings, SupCt 40A.

Access to child, SupCt 40A §7.

Appeals, SupCt 40A §12.

Applicability of rule, SupCt 40A §2.

Criteria for appointment, SupCt 40A §3.

Definitions, SupCt 40A §1.

Duration, SupCt 40A §5.

Duties of guardian ad litem, SupCt 40A §8.

Effective date of provisions, SupCt 40A §13.

Expediting proceedings, SupCt 40A §10.

Fees and expenses, SupCt 40A §11.

Information concerning child.

Access of guardian to information, SupCt 40A §7.

Orders, SupCt 40A §4.

Participation in custody proceedings, SupCt 40A §9.

Rights of guardian ad litem, SupCt 40A §8.

Role of guardian ad litem, SupCt 40A §6.

Participation of guardian in custody proceedings, SupCt 40A §9.

Guidelines, SupCt 40.**GUARDIAN AND WARD.****Judges.**

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

GUARDIANSHIP.**Attorneys at law.**

- Rules of professional conduct.
- Fiduciary defined, SupCt 8 ProfCond 1.0.

GUILTY PLEAS.**Attorney discipline.**

- Conviction of attorney of crime, SupCt 9 §22.

Homicide.

- Murder.
 - First degree murder.
 - Trial judge report in cases resulting in guilty plea, SupCt 12.

H**HARASSMENT.****Attorneys at law.**

- Rules of professional conduct.
- Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

Judges.

- Code of judicial conduct.
- Prevention of harassment in performance of duties, SupCt 10 JudCondCanon 2 (2.3).

HEARINGS.**Attorneys at law.**

- State board of law examiners.
- Formal actions.
- See ATTORNEYS AT LAW.

HOMICIDE.**Murder.**

- First degree murder.
- Trial judge's report, SupCt 12.

I**IMMUNITY.****Alternative dispute resolution.**

- Rule 31A neutrals.
- Judicial function privilege and immunity, SupCt 31A §11.
- Rule 31 mediators.
- Judicial immunity, SupCt 31 §12.

Attorney discipline.

- Board.
 - Conduct in course of official duties, SupCt 9 §17.
- Disciplinary counsel.
 - Conduct in course of official duties, SupCt 9 §17.
- District committees.
 - Conduct in course of official duties, SupCt 9 §17.
- Practice monitors.
 - Conduct in course of official duties, SupCt 9 §17.

INCAPACITATED PERSONS.**Attorney discipline.**

- Disability inactive status, SupCt 9 §27.
- Notice to clients, adverse parties and other counsel, SupCt 9 §28.
- Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

INCOMPETENT PERSONS.**Attorney discipline.**

- Disability inactive status, SupCt 9 §27.
- Notice to clients, adverse parties and other counsel, SupCt 9 §28.
- Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

INDIGENT PERSONS.**Affidavits.**

- Uniform civil affidavit of indigency, SupCt 29.

Appointment of counsel.

- Cap on hours billed, SupCt 13.
- Compensation of appointed counsel, SupCt 13.
- Mental health proceedings, SupCt 15.
- Parole revocation hearings, SupCt 16.
- Right to appointment, SupCt 13.
- Withdrawal of counsel for indigent defendant after adverse decision in court of criminal appeals, SupCt 14.

Civil litigation representation of indigents fund.

- Fund administration, SupCt 11 §VI.

Interpreters.

- Cost of interpreter/translator services, SupCt 42.

Legal representation of indigents fund.

- Administration, SupCt 11 VI.

Parole.

- Appointment and compensation of counsel in parole revocation hearings, SupCt 16.

Post-conviction procedure.

- Duties of counsel, SupCt 28 §6.
- Pauper's oath.
 - Form, SupCt 28 Appx B.
- Preliminary order.
- Appointment of counsel, SupCt 28 §6.

Translators.

- Cost of interpreter/translator services, SupCt 42.

IN-HOUSE COUNSEL.**Registration, SupCt 7 §10.01.****INSURANCE.****Attorneys at law.**

- Prepaid legal insurance providers, SupCt 44.
- Rules of professional conduct, SupCt 8 ProfCond 7.6.

INTERLOCUTORY APPEALS.**Judges.**

- Disqualification.
- Trial judge of court of record.
- Interlocutory appeal as of right upon denial, SupCt 10B §2.

INTERLOCUTORY APPEALS —Cont'd**Jurisdiction.**

- Assumption by supreme court of jurisdiction over undecided cases, SupCt 48.

Workers' compensation appellate procedure.

- Supreme court rulings, SupCt 51 §4.

INTERPRETERS.**Foreign language interpreters.**

- Ethics, rules of, SupCt 41.
- Standards for court interpreters, SupCt 42.

INVESTIGATORS.**Indigent persons.**

- Experts, investigators and other support services.
- Criminal cases, availability, SupCt 13.

INVESTMENTS.**Judges.**

- Code of judicial conduct.
- Conflicts of interest.
 - Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

IOLTA.**Interest on lawyers' trust accounts,**
SupCt 43.**Rules of professional conduct.**

- Safekeeping property, SupCt 8 ProfCond 1.15.

J**JUDGES.****Alcoholic beverages.**

- Code of judicial conduct.
- Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Alternative dispute resolution.

- Code of judicial conduct.
- Conflicts of interest.
 - Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).
- Part-time judicial officers.
 - Rule 31 mediators, listing as, SupCt 31 §14.
- Retirement or resignation pending.
 - Rule 31 mediators, restrictions on full-time judicial officer being listed as, SupCt 31 §14.

Arbitration.

- Code of judicial conduct.
- Conflicts of interest.
 - Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).

Assignment of judges, SupCt 11 §IV.**JUDGES —Cont'd****Attorney discipline.**

- Registration fee.
- Assessment of attorneys.
- Exemptions for judges, justices, retired attorneys, etc, SupCt 9 §10.

Attorney in fact.

- Code of judicial conduct.
- Attorney in fact.
 - Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Attorneys at law.

- Code of judicial conduct.
- Discipline.
 - Cooperation with disciplinary authorities, SupCt 10 JudCondCanon 2 (2.16).
 - Misconduct of judge or attorney.
 - Duties of judge, SupCt 10 JudCondCanon 2 (2.15).
- Practice of law.
 - Conflicts of interest, SupCt 10 JudCondCanon 3 (3.10).
- Rules of professional conduct.
 - Assisting judge in conduct violating judicial conduct codes.
 - Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.
 - False statements as to qualifications of judge or candidate for judge, SupCt 8 ProfCond 8.2.
 - Former judges or arbitrators.
 - Conflicts of interest, SupCt 8 ProfCond 1.12.
 - Impartiality and decorum of tribunal.
 - Communications with judge, juror, etc., SupCt 8 ProfCond 3.5.

Charities.

- Code of judicial conduct.
- Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

Code of judicial conduct, SupCt 10.

- Abuse of prestige of judicial office.
- Avoiding, SupCt 10 JudCondCanon 1 (1.3).
- Administrative responsibilities, SupCt 10 JudCondCanon 2 (2.13).
- Aggregate.
 - Defined, SupCt 10 JudCondTerm.
- Alcohol.
 - Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).
- Alternative dispute resolution.
- Conflicts of interest.
 - Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).
- Applicability of code, SupCt 10 JudCondAppl.

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

Appointive judicial office.

Permitted activities of candidates seeking, SupCt 10 JudCondCanon 4 (4.3).

Appointive nonjudicial office.

Judges becoming candidates, SupCt 10 JudCondCanon 4 (4.5).

Appropriate authority.

Defined, SupCt 10 JudCondTerm.

Arbitration.

Conflicts of interest.

Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).

Attorney in fact.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Attorneys at law.

Assisting judge in conduct violating judicial conduct codes.

Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4.

Discipline.

Cooperation with disciplinary authorities, SupCt 10 JudCondCanon 2 (2.16).

Misconduct of judge or attorney.

Duties of judge, SupCt 10 JudCondCanon 2 (2.15).

Practice of law.

Conflicts of interest, SupCt 10 JudCondCanon 3 (3.10).

Bias.

Prevention of bias in performance of duties, SupCt 10 JudCondCanon 2 (2.3).

Business entities.

Conflicts of interest.

Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

Charitable, religious, educational, etc,

organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

Competent performance of duties, SupCt 10 JudCondCanons 2 (2.1) to (2.16).

Requirement, SupCt 10 JudCondCanon 2 (2.5).

Compliance with law and code, SupCt 10 JudCondCanon 1 (1.1).

Confidence in judiciary.

Acting in manner promoting public confidence, SupCt 10 JudCondCanon 1 (1.2).

Conflicts of interest.

Administrative responsibilities, SupCt 10 JudCondCanon 2 (2.13).

Appointments to governmental committees, boards, etc, SupCt 10 JudCondCanon 3 (3.4).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

Conflicts of interest —Cont'd

Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).

Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

Discrimination.

Affiliation with discriminatory organizations, SupCt 10 JudCondCanon 3 (3.6).

Disqualification, SupCt 10

JudCondCanon 2 (2.11).

External influences, SupCt 10

JudCondCanon 2 (2.4).

Extrajudicial activities.

Restrictions, SupCt 10 JudCondCanon 3 (3.1).

Fiduciary positions, appointment to, SupCt 10 JudCondCanon 3 (3.8).

Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

Extrajudicial activities, compensation, SupCt 10 JudCondCanon 3 (3.12).

Gifts, loans, etc, accepting and reporting, SupCt 10 JudCondCanon 3 (3.13).

Reimbursements for travel, food, lodging, etc, SupCt 10 JudCondCanon 3 (3.14).

Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).

Governmental bodies and officials, appearances before and consultation with.

Restrictions, SupCt 10 JudCondCanon 3 (3.2).

Minimizing risk of conflict in personal and extrajudicial activities, SupCt 10 JudCondCanons 3 (3.1) to (3.15).

Nonpublic information, use, SupCt 10 JudCondCanon 3 (3.5).

Practice of law, SupCt 10 JudCondCanon 3 (3.10).

Pro bono legal services.

Encouraging attorneys to provide, SupCt 10 JudCondCanon 3 (3.7).

Reimbursements for travel, food, lodging, etc, SupCt 10 JudCondCanon 3 (3.14).

Witness, judge as.

Character witness, SupCt 10 JudCondCanon 3 (3.3).

Conservators.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Contributions.

Defined, SupCt 10 JudCondTerm.

Cooperation with other judges and court officials, SupCt 10 JudCondCanon 2 (2.5).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

- Decisions.
 - Responsibility, SupCt 10 JudCondCanon 2 (2.7).
- Decorum.
 - Requiring order and decorum, SupCt 10 JudCondCanon 2 (2.8).
- Definitions, SupCt 10 JudCondTerm.
- Demeanor of judge, SupCt 10 JudCondCanon 2 (2.8).
- De minimis.
 - Defined, SupCt 10 JudCondTerm.
- Diligent performance of duties, SupCt 10 JudCondCanons 2 (2.1) to (2.16).
- Requirement, SupCt 10 JudCondCanon 2 (2.5).
- Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).
- Discrimination.
 - Affiliation with discriminatory organizations, SupCt 10 JudCondCanon 3 (3.6).
- Disqualification, SupCt 10 JudCondCanon 2 (2.11).
- Domestic partners.
 - Defined, SupCt 10 JudCondTerm.
- Economic interest.
 - Defined, SupCt 10 JudCondTerm.
- Elections, political or campaign activity, SupCt 10 JudCondCanons 4 (4.1) to (4.5).
- Appointive judicial office.
 - Permitted activities of candidates seeking, SupCt 10 JudCondCanon 4 (4.3).
- Appointive nonjudicial office.
 - Nonjudicial offices, judges becoming candidate, SupCt 10 JudCondCanon 4 (4.5).
- Campaign committees, SupCt 10 JudCondCanon 4 (4.4).
- Definition of judicial candidates, SupCt 10 JudCondTerm.
- Nonjudicial offices, judges becoming candidates, SupCt 10 JudCondCanon 4 (4.5).
- Public election.
 - Defined, SupCt 10 JudCondTerm.
- Restricted activities, SupCt 10 JudCondCanon 4 (4.1).
- Involvement in public election, SupCt 10 JudCondCanon 4 (4.2).
- Ex parte communications, SupCt 10 JudCondCanon 2 (2.9).
- External influences, SupCt 10 JudCondCanon 2 (2.4).
- Extrajudicial activities.
 - Conflicts of interest.
 - Compensation for extrajudicial activities, SupCt 10 JudCondCanon 3 (3.12).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

- Extrajudicial activities —Cont'd
 - Conflicts of interest —Cont'd
 - Restrictions on extrajudicial activities, SupCt 10 JudCondCanon 3 (3.1).
- Fiduciary activities.
 - Definition of fiduciary, SupCt 10 JudCondTerm.
- Fiduciary positions, appointment to.
 - Conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).
- Gifts.
 - Conflicts of interest.
 - Gifts, loans, etc, accepting and reporting, SupCt 10 JudCondCanon 3 (3.13).
 - Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).
- Goals of code, SupCt 10 JudCondPre.
- Governmental bodies and officials.
 - Appearances before and consultation with.
 - Conflicts of interest.
 - Restrictions on appearances and consultations, SupCt 10 JudCondCanon 3 (3.2).
 - Appointment to government committees, boards, etc.
 - Conflicts of interest, SupCt 10 JudCondCanon 3 (3.4).
- Guardians.
 - Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).
- Harassment.
 - Prevention of harassment in performance of duties, SupCt 10 JudCondCanon 2 (2.3).
- Impartiality of judiciary.
 - Definition of impartial and variants, SupCt 10 JudCondTerm.
 - Disqualification, SupCt 10 JudCondCanon 2 (2.11).
 - Judges to uphold, SupCt 10 JudCondCanons 1 (1.1) to (1.3).
 - Performance of duties in impartial manner, SupCt 10 JudCondCanons 2 (2.1) to (2.16).
 - Upholding and applying the law, SupCt 10 JudCondCanon 2 (2.2).
- Political or campaign activity compromising, SupCt 10 JudCondCanons 4 (4.1) to (4.5).
- Statements on cases compromising impartiality, SupCt 10 JudCondCanon 2 (2.10).
- Impending cases.
 - Definition of impending matters, SupCt 10 JudCondTerm.
 - Statements on cases compromising impartiality, SupCt 10 JudCondCanon 2 (2.10).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

Impropriety.

- Avoidance of impropriety and appearance of impropriety, SupCt 10 JudCondCanons 1 (1.1) to (1.3).

Defined, SupCt 10 JudCondTerm.

Independence.

Defined, SupCt 10 JudCondTerm.

Integrity and independence of judiciary.

- Definitions of integrity and independence, SupCt 10 JudCondTerm.

Judges to uphold, SupCt 10

JudCondCanons 1 (1.1) to (1.3).

Political or campaign activity compromising, SupCt 10

JudCondCanons 4 (4.1) to (4.5).

Investments.

Conflicts of interest.

- Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

Judicial discipline.

- Cooperation with disciplinary authorities, SupCt 10 JudCondCanon 2 (2.16).

Judicial misconduct.

- Duties of judge, SupCt 10 JudCondCanon 2 (2.15).

Jury.

- Communications with jurors, SupCt 10 JudCondCanon 2 (2.8).

Knowingly.

Defined, SupCt 10 JudCondTerm.

Knowledge.

Defined, SupCt 10 JudCondTerm.

Known.

Defined, SupCt 10 JudCondTerm.

Law.

Defined, SupCt 10 JudCondTerm.

Loans.

Conflicts of interest.

- Gifts, loans, etc, accepting and reporting, SupCt 10 JudCondCanon 3 (3.13).

Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).

Mediation.

Conflicts of interest.

- Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).

Member of candidate's family.

Defined, SupCt 10 JudCondTerm.

Member of judge's family.

Defined, SupCt 10 JudCondTerm.

Member of judge's family residing in judge's household.

Defined, SupCt 10 JudCondTerm.

Mental health.

- Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Misconduct of judge or attorney.

- Duties of judge, SupCt 10 JudCondCanon 2 (2.15).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

Motions.

- Disqualification, motion for, SupCt 10 JudCondCanon 2 (2.11).

Nepotism.

- Administrative responsibilities, SupCt 10 JudCondCanon 2 (2.13).

Nonpublic information, use.

- Conflicts of interest, SupCt 10 JudCondCanon 3 (3.5).

Definition of nonpublic information, SupCt 10 JudCondTerm.

Pending cases.

- Definition of pending matters, SupCt 10 JudCondTerm.

Statements on cases compromising impartiality, SupCt 10 JudCondCanon 2 (2.10).

Personally solicit.

Defined, SupCt 10 JudCondTerm.

Personal representatives.

- Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Political organizations.

Defined, SupCt 10 JudCondTerm.

Practice of law.

- Conflicts of interest, SupCt 10 JudCondCanon 3 (3.10).

Preamble, SupCt 10 JudCondPre.

Precedence to judicial duties, SupCt 10 JudCondCanon 2 (2.1).

Prejudice.

- Prevention of prejudice in performance of duties, SupCt 10 JudCondCanon 2 (2.3).

Pro bono legal services.

- Encouraging attorneys to provide, SupCt 10 JudCondCanon 3 (3.7).

Public election.

Defined, SupCt 10 JudCondTerm.

Recusal, SupCt 10 JudCondCanon 2 (2.11).

Referrals.

- Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Reimbursements for travel, food, lodging, etc.

- Conflicts of interest, SupCt 10 JudCondCanon 3 (3.14).

Right to be heard.

- Providing for right to be heard, SupCt 10 JudCondCanon 2 (2.6).

Scope of code, SupCt 10 JudCondScope.

Settlements.

- Definition of judicial settlement conference, SupCt 10 JudCondTerm.
- Encouraging without coercing, SupCt 10 JudCondCanon 2 (2.6).

Statements on cases compromising

- impartiality, SupCt 10 JudCondCanon 2 (2.10).

JUDGES —Cont'd**Code of judicial conduct —Cont'd**

Substance abuse.

Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Supervision of staff, officials, etc, SupCt 10 JudCondCanon 2 (2.12).

Third degree of relationship.

Defined, SupCt 10 JudCondTerm.

Time for compliance with code, SupCt 10 JudCondAppl.

Trustees.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Witnesses.

Character witnesses.

Prohibition of judge serving as character witness, SupCt 10 JudCondCanon 3 (3.3).

Conflicts of interest.

Code of judicial conduct, SupCt 10 JudCondCanons 3 (3.1) to (3.15).

Conservators.

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Continuing part time judge.

Code of judicial conduct.

Applicability of code, SupCt 10 JudCondAppl.

Cooperation with other judges and court officials.

Code of judicial conduct, SupCt 10 JudCondCanon 2 (2.5).

Corporations and other business entities.

Code of judicial conduct.

Conflicts of interest.

Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

Decisions.

Code of judicial conduct.

Responsibility, SupCt 10 JudCondCanon 2 (2.7).

Decorum.

Code of judicial conduct.

Requiring order and decorum, SupCt 10 JudCondCanon 2 (2.8).

Demeanor of judge.

Code of judicial conduct, SupCt 10 JudCondCanon 2 (2.8).

Disability of judge or chancellor.

Code of judicial conduct.

Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Discipline.

Code of judicial conduct.

Judicial discipline.

Cooperation with disciplinary authorities, SupCt 10 JudCondCanon 2 (2.16).

JUDGES —Cont'd**Discrimination.**

Code of judicial conduct.

Affiliation with discriminatory organizations, SupCt 10 JudCondCanon 3 (3.6).

Disqualification.

Appellate judge or justice, SupCt 10B §3.

Code of judicial conduct, SupCt 10 JudCondCanon 2 (2.11).

Designation of judge.

Request for designation of judge, SupCt 10B §1, SupCt 10B Appx.

Ethical complaints against judges.

Rule's provisions do not affect right to file, SupCt 10B §5.

Intermediate appellate court, multiple judges.

Review of denial of recusal motion, SupCt 10B §3.

Judicial officers not judges of court of record, SupCt 10B §4.

Motions, filing and disposition, SupCt 10B.

Supreme court, disqualification of all justices.

Review of denial of recusal motion not available, SupCt 10B §3.

Trial judge of court of record, SupCt 10B §1.

Appeal, SupCt 10B §2.

Election.

Code of judicial conduct.

Elections, political or campaign activity, SupCt 10 JudCondCanons 4 (4.1) to (4.5).

Ethics.

Disqualification.

Ethical complaints against judges.

Disqualification rule's provisions do not affect right to file, SupCt 10B §5.

Ethics opinions, SupCt 10A.**Executors and administrators.**

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Ex parte communications.

Code of judicial conduct, SupCt 10 JudCondCanon 2 (2.9).

Fiduciaries.

Code of judicial conduct.

Fiduciary positions, appointment to.

Conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Former judges as attorney.

Conflicts of interest, SupCt 8 ProfCond 1.12.

Gifts.

Code of judicial conduct.

Conflicts of interest.

Gifts, loans, etc, accepting and reporting, SupCt 10 JudCondCanon 3 (3.13).

Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).

JUDGES —Cont'd**Guardians.**

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Harassment.

Code of judicial conduct.

Prevention of harassment in performance of duties, SupCt 10 JudCondCanon 2 (2.3).

Impartiality of judiciary.

Code of judicial conduct.

Disqualification, SupCt 10 JudCondCanon 2 (2.11).

Judges to uphold, SupCt 10

JudCondCanons 1 (1.1) to (1.3).

Performance of duties in impartial manner, SupCt 10 JudCondCanons 2 (2.1) to (2.16).

Upholding and applying the law, SupCt 10 JudCondCanon 2 (2.2).

Political or campaign activity compromising, SupCt 10

JudCondCanons 4 (4.1) to (4.5).

Statements on cases compromising impartiality, SupCt 10 JudCondCanon 2 (2.10).

Incompetency.

Code of judicial conduct.

Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Investments.

Code of judicial conduct.

Conflicts of interest.

Financial, business, remunerative, etc, activities, restrictions, SupCt 10 JudCondCanon 3 (3.11).

Jury.

Code of judicial conduct.

Communications with jurors, SupCt 10 JudCondCanon 2 (2.8).

Loans.

Code of judicial conduct.

Conflicts of interest.

Gifts, loans, etc, accepting and reporting, SupCt 10 JudCondCanon 3 (3.13).

Requirements for reporting, SupCt 10 JudCondCanon 3 (3.15).

Mediation.

Code of judicial conduct.

Conflicts of interest.

Arbitrator, mediator, neutral, etc, service as, SupCt 10 JudCondCanon 3 (3.9).

Mentally ill.

Code of judicial conduct.

Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

Murder.

First degree murder.

Trial judge's report, SupCt 12.

JUDGES —Cont'd**Nepotism.**

Code of judicial conduct.

Administrative responsibilities, SupCt 10 JudCondCanon 2 (2.13).

Part time judges.

Continuing part time judge.

Code of judicial conduct.

Applicability of code, SupCt 10 JudCondAppl.

Pro tempore part time judges.

Code of judicial conduct.

Applicability of code, SupCt 10 JudCondAppl.

Power of attorney.

Code of judicial conduct.

Attorney in fact.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Presiding judges.

Procedure for designation, SupCt 11 §III.

Presiding judges pro tempore.

Designation, SupCt 11.

Pro bono legal services.

Code of judicial conduct.

Encouraging attorneys to provide, SupCt 10 JudCondCanon 3 (3.7).

Pro tempore part time judges.

Code of judicial conduct.

Applicability of code, SupCt 10 JudCondAppl.

Recusal.

Code of judicial conduct, SupCt 10 JudCondCanon 2 (2.11).

Motions, filing and disposition, SupCt 10B.

Religion.

Code of judicial conduct.

Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

Retired or former judges.

Alternative dispute resolution.

Rule 31 mediators, restrictions on full-time judicial officer being listed as, SupCt 31 §14.

Schools and education.

Code of judicial conduct.

Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

Senior judges.

Code of judicial conduct.

Applicability of code, SupCt 10 JudCondAppl.

Settlements.

Code of judicial conduct.

Encouraging without coercing, SupCt 10 JudCondCanon 2 (2.6).

Substance abuse.

Code of judicial conduct.

Disability or impairment by alcohol, other substances or mental, etc, conditions, SupCt 10 JudCondCanon 2 (2.14).

JUDGES —Cont'd**Substitute judges**, SupCt 11 §VII.**Trustees.**

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

Witnesses.

Code of judicial conduct.

Character witnesses.

Prohibition of judge serving as character witness, SupCt 10 JudCondCanon 3 (3.3).

JUDGMENTS.**Forms.**

Judgment documents, SupCt 17.

Lawyers' fund for client protection.

Judgments.

Claims for certain amounts.

Requirement of judgment, SupCt 25 §11.

JUDICIAL DATA COLLECTION.**Uniform court procedures**, SupCt 11 §II.**JUDICIAL DISTRICTS.****Designation of circuit justices**, SupCt 11 §V.**JUDICIAL DIVERSION.****Attorney discipline.**

Serious crime.

Effect of diversion on disciplinary proceedings, SupCt 9 §22.

JURISDICTION.**Assumption by supreme court of jurisdiction over undecided cases in intermediate appellate courts**, SupCt 48.**Attorney discipline.**

Multijurisdictional practice, SupCt 9 §9.

Scope of disciplinary jurisdiction of court, board, district committees and hearing panels, SupCt 9 §8.

JURY.**Alternative dispute resolution.**

Summary jury trial.

Applicability of rules, SupCt 31A §§1, 20.

Defined, SupCt 31A §2.

Attorneys at law.

Rules of professional conduct.

Impartiality and decorum of tribunal.

Communications with judge, juror, etc., SupCt 8 ProfCond 3.5.

Judges.

Code of judicial conduct.

Communications with jurors, SupCt 10 JudCondCanon 2 (2.8).

JUSTICES.**Attorney discipline.**

Registration fee.

Assessment of attorneys.

Exemptions for judges, justices, retired attorneys, etc, SupCt 9 §10.

JUSTICES —Cont'd**Circuit justices**, SupCt 11 §V.**Term of chief justice**, SupCt 32.**JUVENILE PROCEEDINGS.****Attorneys, court appointed**, SupCt 13.**Guardians ad litem.**

Guidelines, SupCt 40.

L**LAW SCHOOLS.****Approval**, SupCt 7 §2.02.

Tennessee law schools, SupCt 7 §17.01.

Confidentiality of approval and evaluation procedures, SupCt 7 §17.07.

Conflicts of interest of board members, fact finders, site evaluation teams, etc, SupCt 7 §17.10.

Deficiencies in mission, actions when board has reasonable cause, SupCt 7 §17.04.

Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.

Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.

Show cause order, hearing, SupCt 7 §17.06.

Fact finder to elicit relevant facts, SupCt 7 §17.05.

Noncompliance with standards, actions when board has reasonable cause, SupCt 7 §17.04.

Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.

Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.

Show cause order, hearing, SupCt 7 §17.06.

Review and regulation of Tennessee-approved law schools, board's functions, SupCt 7 §17.02.
Site evaluation of Tennessee-approved law schools, SupCt 7 §17.03.**Attorney discipline.**

Registration fee.

Assessment of attorneys.

Exemptions for judges, justices, retired attorneys, etc, SupCt 9 §10.

Attorneys at law.

Law student practice, SupCt 7 §10.03.

Licensing of attorneys.

Educational requirements for admission.

See ATTORNEYS AT LAW.

Experiential learning programs.

Approval of program, SupCt 7 §10.02.

Attorneys employed by or associated with programs.

Admission to practice, SupCt 7 §10.02.

LAW SCHOOLS —Cont'd**Tennessee law schools.**

- Approved law schools, SupCt 7 §17.01.
- Confidentiality of approval and evaluation procedures, SupCt 7 §17.07.
- Conflicts of interest of board members, fact finders, site evaluation teams, etc, SupCt 7 §17.10.
- Deficiencies in mission, actions when board has reasonable cause, SupCt 7 §17.04.
- Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
- Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
- Show cause order, hearing, SupCt 7 §17.06.
- Fact finder to elicit relevant facts, SupCt 7 §17.05.
- Noncompliance with standards, actions when board has reasonable cause, SupCt 7 §17.04.
- Probationary or remedial requirements, time for compliance, SupCt 7 §17.09.
- Sanctions, supreme court consideration of board recommendation, SupCt 7 §17.08.
- Show cause order, hearing, SupCt 7 §17.06.
- Review and regulation of
 - Tennessee-approved law schools, board's functions, SupCt 7 §17.02.
- Site evaluation of Tennessee-approved law schools, SupCt 7 §17.03.

Unaccredited law schools.

- Eligibility of graduates to take bar examination, SupCt 7 §2.02.

LAW STUDENTS.**Practice of law, SupCt 7 §10.03.****Research assistants.**

- Employment of senior law students, SupCt 5.

LAWYER INTERMEDIARY**ORGANIZATIONS, SupCt 44.****Rules of professional conduct, SupCt 8 ProfCond 7.6.****LAWYERS' ASSISTANCE PROGRAM,**

SupCt 33, 33.01 to 33.13.

Advisory committees.

- Authority of commission, SupCt 33.02.

Aftercare services, SupCt 33.05.**Attorney discipline.**

- Tennessee lawyer assistance program (TLAP).
- Referrals, SupCt 9 §36.

Commission.

- Composition, SupCt 33.02.
- Duties, SupCt 33.02.
- Proceedings of commission, SupCt 33.02.

LAWYERS' ASSISTANCE PROGRAM**—Cont'd****Confidentiality of information, SupCt 33.10.****Director.**

- Appointment, SupCt 33.03.
- Duties, SupCt 33.03.
- Qualifications, SupCt 33.03.

Educational programs, SupCt 33.05.**Establishment, SupCt 33.01.****Funding, SupCt 33.01.****Local assistance programs, SupCt 33.08.****Monitoring services, SupCt 33.05.****Office facility.**

- Security of office, SupCt 33.12.

Program services, SupCt 33.05.**Progress reports, SupCt 33.07.****Public policy, SupCt 33.01.****Receiving information.**

- Civil immunity, SupCt 33.11.

Records.

- Confidentiality of records, SupCt 33.10.

Referrals, SupCt 33.06, 33.07.**Reporting information.**

- Civil immunity, SupCt 33.11.

Review of program, SupCt 33.13.**Revolving loan fund, SupCt 33.09.****Self-referrals, SupCt 33.06.****Sunset provisions, SupCt 33.13.****Supporting organization.**

- Revolving loan fund.

- Transfer of money and other assets to supporting organization, SupCt 33.09.

Volunteer counselors, SupCt 33.04.**LAWYERS' FUND FOR CLIENT PROTECTION.****Accounts, SupCt 25 §3.****Attorneys at law.**

- Fees, SupCt 25 §18.

Board.

- Appointment, SupCt 25 §4.
- Bonds, surety, SupCt 25 §4.
- Compensation, SupCt 25 §4.
- Composition, SupCt 25 §4.
- Conflicts of interest, SupCt 25 §7.
- Duties, SupCt 25 §6.
- Immunity, SupCt 25 §8.
- Meetings, SupCt 25 §5.
- Officers, SupCt 25 §§4, 14.
- Responsibilities, SupCt 25 §6.
- Terms of office, SupCt 25 §§4, 14.
- Vacancies, SupCt 25 §4.

Claims.

- Considerations on payment of claims, SupCt 25 §14.
- Eligible claims, SupCt 25 §12.
- Procedures, SupCt 25 §9.
- Processing, SupCt 25 §10.

Composition of fund, SupCt 25 §2.**Confidentiality, SupCt 25 §17.****Definition of lawyer, SupCt 25 §1.****Dishonest conduct.**

- Defined, SupCt 25 §1.

LAWYERS' FUND FOR CLIENT**PROTECTION —Cont'd****Establishment**, SupCt 25 §1.**Judgments.**

Claims for certain amounts.

Requirement of judgment, SupCt 25 §11.

Payments.Considerations on payment of claims,
SupCt 25 §14.

Legal rights to payment, SupCt 25 §15.

Limitation on amount, SupCt 25 §13.

Payments to board, SupCt 25 §19.**Purposes**, SupCt 25 §1.**Reimbursement.**

Limitations on amount, SupCt 25 §13.

Responsibilities for claimants, SupCt 25
§9.**Scope of rules**, SupCt 25 §1.**Subrogation**, SupCt 25 §16.**LIMITATION OF ACTIONS.****Lawyers' fund for client protection.**

Claims.

Eligible claims, SupCt 25 §12.

LOANS.**Judges.**

Code of judicial conduct.

Conflicts of interest.

Gifts, loans, etc, accepting and
reporting, SupCt 10
JudCondCanon 3 (3.13).Requirements for reporting, SupCt 10
JudCondCanon 3 (3.15).**LOCAL RULES OF COURT.****Electronic service of papers E-filed
pursuant to local rules of court**,
SupCt 46(A).**Trial courts.**

Practice in trial courts, SupCt 18.

M**MAGISTRATES.****Child support.**Appointment of magistrate in child support
cases, SupCt 22.**MARRIAGE.****Discrimination.**

Attorneys at law.

Rules of professional conduct.

Conduct constituting professional
misconduct, SupCt 8 ProfCond 8.4
(Proposed).**MASTERS, REFERENCE TO.****Alternative dispute resolution.**

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31
§14.**MEDIA COVERAGE OF COURT
PROCEEDINGS**, SupCt 30.**MEDIATION.****Alternative dispute resolution generally.**See ALTERNATIVE DISPUTE
RESOLUTION.**Attorneys at law.**

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

Judges.

Code of judicial conduct.

Conflicts of interest.

Arbitrator, mediator, neutral, etc,
service as, SupCt 10
JudCondCanon 3 (3.9).**Parenting plans.**Divorcing parent education and mediation
fund, SupCt 38 §2.**MEDIATORS.****Rule 31 mediators.**See ALTERNATIVE DISPUTE
RESOLUTION.**MENTAL HEALTH.****Attorney discipline.**

Disability inactive status, SupCt 9 §27.

Notice to clients, adverse parties and
other counsel, SupCt 9 §28.Tennessee lawyer assistance program
(TLAP), SupCt 9 §36.**Attorneys at law.**Conditional admission of rehabilitating
applicants, SupCt 7 §10.05.

Rules of professional conduct.

Diminished capacity.

Representing clients with diminished
capacity, SupCt 8 ProfCond 1.14.

Disability, client under.

Representing clients under disability,
SupCt 8 ProfCond 1.14.**Costs.**Reimbursement of costs in mental health
proceedings, SupCt 15.**Fees.**Reimbursement of costs in mental health
proceedings, SupCt 15.**Judges.**

Code of judicial conduct.

Disability or impairment by alcohol, other
substances or mental, etc, conditions,
SupCt 10 JudCondCanon 2 (2.14).**Sheriffs.**

Fees.

Reimbursement of costs in mental health
proceedings, SupCt 15.**Witnesses.**

Fees.

Reimbursement of costs in mental health
proceedings, SupCt 15.**MILITARY AFFAIRS.****Attorney discipline.**

Registration fee.

Assessment of attorneys.

Exemptions for judges, justices, retired
attorneys, etc, SupCt 9 §10.

MILITARY AFFAIRS —Cont'd**Attorneys at law.**

Licensing.

Temporary license and admission of
military spouses, SupCt 7 §10.06.

MINI-TRIAL.**Alternative dispute resolution.**

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §19.

Defined, SupCt 31A §2.

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §14.

Attorneys at law.

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

MINORS.**Attorneys at law.**

Rules of professional conduct.

Diminished capacity.

Representing clients with diminished
capacity, SupCt 8 ProfCond 1.14.

Disability, client under.

Representing clients under disability,
SupCt 8 ProfCond 1.14.

MISDEMEANORS.**Appointment of counsel when jeopardy
of incarceration exists, SupCt 13.****MOTIONS.****Judges, disqualification.**

Appellate judge or justice, SupCt 10B §3.

Intermediate appellate court, multiple
judges.

Review of denial of recusal motion, SupCt
10B §3.

Judicial officers not judges of court of
record, SupCt 10B §4.

Supreme court, disqualification of all
justices.

Review of denial of recusal motion not
available, SupCt 10B §3.

Trial judge of court of record, SupCt 10B §1.

Appeal, SupCt 10B §2.

**Size and format of papers filed in state
courts, SupCt 36.****MULTIJURISDICTIONAL PRACTICE OF
LAW.****Attorney discipline, SupCt 9 §9.****MURDER.****First degree murder.**

Trial judge's report, SupCt 12.

N**NATIONAL ORIGIN.****Discrimination.**

Attorneys at law.

Rules of professional conduct.

Conduct constituting professional
misconduct, SupCt 8 ProfCond 8.4
(Proposed).

NEPOTISM.**Judges.**

Code of judicial conduct.

Administrative responsibilities, SupCt 10
JudCondCanon 2 (2.13).

NOLO CONTENDERE.**Attorney discipline.**

Conviction of attorney of crime, SupCt 9
§22.

NONCOMPETITION AGREEMENTS.**Attorneys at law.**

Rules of professional conduct.

Firm.

Restrictions on right to practice, SupCt
8 ProfCond 5.6.

NONRESIDENTS.**Attorneys at law.**

Appearance in court, SupCt 19.

Admitted to practice in Tennessee but
having no office in state, SupCt 20.

O**OPEN COURTS RULE, SupCt 11 §VII.****OPINIONS.****Certification of questions of state law
from federal court, SupCt 23 §8.****Publication, SupCt 4.****Standard format, SupCt 35.****Unpublished opinions.**

Citation, SupCt 4.

ORAL ARGUMENT.**Certification of questions of state law
from federal court, SupCt 23 §7.****ORDERS.****Attorney discipline.**

Noncompliance.

Grounds for discipline, SupCt 9 §11.

Attorneys at law.

Rules of professional conduct.

Knowing noncompliance.

Conduct constituting professional
misconduct, SupCt 8 ProfCond 8.4.

Guardian ad litem.

Appointment of guardian ad litem in
custody proceeding, SupCt 40A §4.

Standard format, SupCt 35.**OTHER STATES OR JURISDICTIONS.****Attorney discipline.**

Reciprocal discipline, SupCt 9 §25.

Attorneys at law.

Licensing of attorneys.

Practice in Tennessee pending admission
for applicant licensed in another
jurisdiction, SupCt 7 §10.07.

OVERDRAFTS.**Attorney discipline.**

Trust accounts.

Detection and prevention of violations,
SupCt 9 §35.

P

PAPERS.

Size and format of papers filed in state courts, SupCt 36.

PARENTING PLANS.

Divorcing parent and education mediation fund, SupCt 38.

PAROLE.**Indigent persons.**

Appointment and compensation of counsel in parole revocation hearings, SupCt 13, 16.

PARTIES.**Attorney discipline.**

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Certification of questions of state law from federal court, SupCt 23 §6.

Names of parties.

Certification order to include, SupCt 23 §3.

PARTNERSHIPS.**Attorneys at law.**

Rules of professional conduct.

Definition of partner, SupCt 8 ProfCond 1.0.

Nonattorneys, partnership with.

Professional independence of attorney, SupCt 8 ProfCond 5.4.

Partners, managing or supervisory lawyers.

Compliance with RPC, duties to ensure, SupCt 8 ProfCond 5.1.

Nonlawyer employees, responsibilities for, SupCt 8 ProfCond 5.3.

PETITIONS.**Post-conviction procedure,** SupCt 28 §§4, 5.

Appeals from dismissals or denials of petition, SupCt 28 §10.

Form petition, SupCt 28 Appx A.

Procedure after petition filed, SupCt 28 §6.

State board of law examiners.

Petitions to board, SupCt 7 §13.02.

Review of board decisions, SupCt 7 §14.01.

Waiver of parental consent for abortions by minors, SupCt 24.

Forms, SupCt 24 Appx.

PLEADINGS.

Size and format of papers filed in state courts, SupCt 36.

POST-CONVICTION PROCEDURE.

Answer to petition, SupCt 28 §5.

Appeals, SupCt 28 §10.

Applicability of other rules, SupCt 28 §3.

Authority for adoption of rules, SupCt 28 §1.

Capital cases.

Appointment of counsel, SupCt 13.

POST-CONVICTION PROCEDURE

—Cont'd

Capital cases —Cont'd

Setting execution date at conclusion, SupCt 12.

Certification of counsel.

Form, SupCt 28 Appx C.

Citation of rules, SupCt 28 §11.

Commencement of proceeding, SupCt 28 §4.

Decision by court, SupCt 28 §9.

Definitions, SupCt 28 §§2, 12.

Discovery, SupCt 28 §7.

Evidentiary hearing, SupCt 28 §8.

Forms.

Affidavit of indigence, SupCt 28 Appxs B, E.

Certification of counsel, SupCt 28 Appx C.

Motion to reopen, SupCt 28 Appx D.

Petitions, SupCt 28 Appx A.

Preliminary order.

Colorable claim, SupCt 28 Appx F.

No colorable claim, SupCt 28 Appx G.

Scheduling order, SupCt 28 Appx H.

Indigent persons.

Affidavit of indigence.

Form, SupCt 28 Appxs B, E.

Duties of counsel, SupCt 28 §6.

Preliminary order.

Appointment of counsel, SupCt 28 §6.

Motion for stay.

Motions for review of, SupCt 28 §10.

Motion to reopen, SupCt 28 §5.

Appeal from denial, SupCt 28 §10.

Form motion to reopen, SupCt 28 Appx D.

Petitions, SupCt 28 §§4, 5.

Appeals from dismissals or denials of petition, SupCt 28 §10.

Form petition, SupCt 28 Appx A.

Procedure after petition filed, SupCt 28 §6.

Pleadings, SupCt 28 §5.**Preliminary order,** SupCt 28 §6.

Form preliminary orders.

Colorable claim, SupCt 28 Appx F.

No colorable claim, SupCt 28 Appx G.

Relief granted, SupCt 28 §9.**Scope of rules,** SupCt 28 §1.**Service of orders,** SupCt 28 §6.**Subpoenas.**

Evidentiary hearing, SupCt 28 §8.

Witnesses.

Evidentiary hearing, SupCt 28 §8.

POST-TRIAL DIVERSION.**Order of deferral,** SupCt 17A.**POWER OF ATTORNEY.****Judges.**

Code of judicial conduct.

Attorney in fact.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

PRIVILEGED COMMUNICATIONS.**Collaborative family law.**

Disclosure of communications, privilege against, SupCt 53 §17.

PRIVILEGED COMMUNICATIONS

—Cont'd

Collaborative family law —Cont'd

Limits of privilege, SupCt 53 §19.

Waiver and preclusion of privilege, SupCt 53 §18.

PRIVILEGE TAX.**Attorney discipline.**

Failure to pay tax, SupCt 9 §26.

PROBATION.**Attorney discipline**, SupCt 9 §14.**Deferral of further proceedings and placement on probation.**

Order of deferral, SupCt 17A.

Sentencing.

Deferred probation.

Order of deferral, SupCt 17A.

PRO BONO INTERPRETATION SERVICES.**Foreign language interpreters.**

Ethical requirements, SupCt 41.

PRO BONO LEGAL SERVICES.**Attorney discipline.**

Pro bono reporting.

Annual registration statement.

Form, SupCt 9 Appx A.

Pro bono reporting statement.

Filing by attorneys liable for registration fee, SupCt 9 §10.

Emeritus attorneys, SupCt 50A.**Judges.**

Code of judicial conduct.

Encouraging attorneys to provide, SupCt 10 JudCondCanon 3 (3.7).

Research assistants.

Exceptions to restrictions on practice of law, SupCt 5.

Rules of professional conduct.

Multijurisdictional practice of law, SupCt 8 ProfCond 5.5.

Pro bono publico representation, SupCt 8 ProfCond 6.1.

PROFESSIONAL RESPONSIBILITY AND CONDUCT.**Alternative dispute resolution.**

Professional conduct for rule 31 mediators and rule 31A neutrals, standards, SupCt 31 Appx A §§1 to 14.

See ALTERNATIVE DISPUTE RESOLUTION.

Attorneys.

Board of professional responsibility.

Discipline.

See ATTORNEYS AT LAW.

Rules of professional conduct, SupCt 8 ProfCond 1.0 to 8 ProfCond 8.5.

See ATTORNEYS AT LAW.

PRO HAC VICE.**Multijurisdictional practice of law**, SupCt 8 ProfCond 5.5.

Disciplinary authority, SupCt 8 ProfCond 8.5.

PRO HAC VICE —Cont'd
Nonresidents.

Attorneys at law.

Appearance in court, SupCt 19.

PROSECUTORS.**Rules of professional conduct.**

Special responsibilities of prosecutors, SupCt 8 ProfCond 3.8.

PRO SE LITIGANTS.**Forms.**

Court-approved forms, SupCt 52.

PUBLICITY.**Attorneys at law.**

Rules of professional conduct.

Trial publicity, SupCt 8 ProfCond 3.6.

PUBLIC OFFICERS AND EMPLOYEES.**Right to hold or retain public office.**

Undecided cases in intermediate state appellate courts.

Assumption by supreme court of jurisdiction over undecided cases, SupCt 48.

Q**QUESTIONS OF STATE LAW.****Certification from federal court**, SupCt 23.

See CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURT.

R**RECEIVERS.****Attorney discipline.**

Receiver attorneys.

Appointment of receiver attorneys to protect interests of clients, SupCt 9 §29.

RECIPROCITY.**Attorney discipline.**

Reciprocal discipline, SupCt 9 §25.

RECORDS.**Attorney discipline.**

Notice of discipline to clients, adverse parties and other counsel, SupCt 9 §28.

Certification of questions of state law from federal court.

Record may be required, SupCt 23 §5.

Custody of and access to appellate judicial records, SupCt 34.**Electronic recordings of court proceedings**, SupCt 26.**REFEREES.****Alternative dispute resolution.**

Part-time judicial officers.

Rule 31 mediators, listing as, SupCt 31 §14.

RELIGION.**Discrimination.**

- Attorneys at law.
- Rules of professional conduct.
- Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

Judges.

- Code of judicial conduct.
- Charitable, religious, educational, etc, organizations and activities, participation, SupCt 10 JudCondCanon 3 (3.7).

REPORTS.

- Alternative dispute resolution**, SupCt 31 §5.
- Rule 31A neutrals.
- Reports upon conclusion of proceedings, SupCt 31A §5.

Homicide.

- Murder.
- First degree murder.
- Trial judge's report, SupCt 12.

Lawyer intermediary organizations.

- Annual reporting requirements, SupCt 44.

REPRIMAND.**Attorney discipline.**

- Private reprimand.
- Diversion of disciplinary cases, SupCt 9 §13.
- Resolution by private reprimand, SupCt 9 §§15, 16.
- Types of discipline, SupCt 9 §12.

RESEARCH ASSISTANTS, SupCt 5.**Certificate**, SupCt 5.**Practice of law.**

- Restrictions, SupCt 5.

RESTITUTION.**Attorney discipline.**

- Types of discipline, SupCt 9 §12.

RETIREMENT.**Attorney discipline.**

- Registration fee.
- Assessment of attorneys.
- Exemptions for judges, justices, retired attorneys, etc, SupCt 9 §10.

ROSTER OF ATTORNEYS.**Court-appointed roster.**

- Trial courts to maintain, SupCt 13.

RULES OF APPELLATE PROCEDURE.**Applicability**, SupCt 1.**How cited**, SupCt 1.**RULES OF CIVIL PROCEDURE.****Attorney discipline.**

- Applicability of rules of civil procedure, SupCt 9 §34.

RULES OF PROFESSIONAL CONDUCT,

SupCt 8 ProfCond 1.0 to 8 ProfCond 8.5.

See ATTORNEYS AT LAW.

S**SANCTIONS.****Attorneys at law.**

- Continuing legal education.
- Noncompliance, SupCt 21 §7.

SENTENCING.**Post-trial diversion.**

- Order of deferral, SupCt 17A.

Probation.

- Deferred probation.
- Order of deferral, SupCt 17A.

SERVICE OF PROCESS.**Attorney discipline.**

- Service of petition, SupCt 9 §18.

Certification of questions of state law from federal court.

- Order, SupCt 23 §4.

E-filing.

- Electronic service.
- Automatic service by e-filing system, SupCt 46 §4.01.
- Definition of e-service, SupCt 46 §1.01.
- Documents filed by court, SupCt 46 §4.02.
- Papers E-filed pursuant to local rules of court, SupCt 46(A).

SETTLEMENTS.**Attorneys at law.**

- Rules of professional conduct.
- Conflicts of interest.
- Prohibited transactions, SupCt 8 ProfCond 1.8.
- Scope of representation, SupCt 8 ProfCond 1.2.

SEXUAL HARASSMENT.**Attorneys at law.**

- Rules of professional conduct.
- Conduct constituting professional misconduct, SupCt 8 ProfCond 8.4 (Proposed).

SHERIFFS.**Mental health.**

- Fees.
- Reimbursement of costs in mental health proceedings, SupCt 15.

SIGNATURES.**Appeals.**

- E-filing.
- Definition of electronic signature, SupCt 46 §1.01.

SIZE AND FORMAT OF PAPERS FILED IN STATE COURTS, SupCt 36.**SOLICITATION OF EMPLOYMENT.****Attorneys at law.**

- Intermediary organizations, SupCt 44.
- Rules of professional conduct.
- Directing solicitation to specifically identified recipients, SupCt 8 ProfCond 7.3.

STATE BOARD OF LAW EXAMINERS.

See ATTORNEYS AT LAW.

STATUTE OF LIMITATIONS.**Lawyers' fund for client protection.**

Claims.

Eligible claims, SupCt 25 §12.

STAYS.

Execution date, SupCt 12.

STUDENT ASSISTANCE CORPORATION.**Attorney discipline.**

Default on student loans.

Suspension of license, SupCt 9 §37.

Loans.

Attorney discipline.

Default on student loans.

Suspension of license, SupCt 9 §37.

STUDENT LOANS.**Attorney discipline.**

Default by regulated professions.

Suspension of law license, SupCt 9 §37.

Default by regulated professions.

Attorney discipline.

Suspension of law license, SupCt 9 §37.

SUBPOENAS.

Attorney discipline, SupCt 9 §19.

Attorneys at law.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

Post-conviction procedure.

Evidentiary hearing, SupCt 28 §8.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

SUBSTANCE ABUSE.**Attorney discipline.**

Disability inactive status, SupCt 9 §27.

Notice to clients, adverse parties and other counsel, SupCt 9 §28.

Tennessee lawyer assistance program (TLAP), SupCt 9 §36.

SUBSTITUTE JUDGES, SupCt 11 §VII.**SUMMARY JURY TRIAL.****Alternative dispute resolution.**

Applicability of rules, SupCt 31A §§1, 20.

Defined, SupCt 31A §2.

Rules of professional conduct.

Dispute resolution neutrals.

Attorney as, SupCt 8 ProfCond 2.4.

SUPERVISION OF THE JUDICIAL**SYSTEM**, SupCt 11.

Inherent power of court, SupCt 11 §I.

T**TAXATION.****Cases involving state taxes.**

Jurisdiction over undecided cases in intermediate state appellate courts.

Assumption by supreme court of jurisdiction over undecided cases, SupCt 48.

TENNESSEE LAWYER ASSISTANCE PROGRAM, SupCt 9 §36.**TENNESSEE RULES OF APPELLATE PROCEDURE.**

Applicability, SupCt 1.

How cited, SupCt 1.

TENNESSEE RULES OF**POST-CONVICTION PROCEDURE**,

SupCt 28.

See POST-CONVICTION PROCEDURE.

TERMINATION OF PARENTAL RIGHTS.

Appointment of counsel, SupCt 13.

TRANSCRIPTS.

Attorney discipline, SupCt 9 §34.

TRIAL.**Mini-trial.**

Alternative dispute resolution.

Applicability of rules, SupCt 31A §1.

Authority to conduct, SupCt 31A §19.

Defined, SupCt 31A §2.

Rule 31A neutrals.

Selection of neutrals, SupCt 31A §14.

TRIAL COURTS.**Electronic recordings of court proceedings.**

"Transcript" to include electronic recording, SupCt 26 §2.

Local rules of practice in trial courts, SupCt 18.

TRUST ACCOUNTS OF ATTORNEYS.**Attorney discipline.**

Detection and prevention of violations, SupCt 9 §35.

Interest on lawyers' trust accounts, SupCt 43.

Rules of professional conduct.

Safekeeping property, SupCt 8 ProfCond 1.15.

TRUSTS AND TRUSTEES.**Judges.**

Code of judicial conduct.

Fiduciary position appointments, conflicts of interest, SupCt 10 JudCondCanon 3 (3.8).

U

UNAUTHORIZED PRACTICE OF LAW, SupCt 8 ProfCond 5.5.

Multijurisdictional practice of law, SupCt 8 ProfCond 5.5.

Disciplinary authority, SupCt 8 ProfCond 8.5.

UNIFORM JUDGMENT DOCKET, SupCt 17.

UNPUBLISHED OPINIONS, SupCt 4.

V

VIDEOTAPE RECORDINGS OF COURT PROCEEDINGS.

Electronic recordings of court proceedings generally, SupCt 26.

W

WITNESSES.**Alternative dispute resolution.**

Rule 31A neutrals as witnesses, SupCt 31A §10.

Rule 31 mediators as witnesses, SupCt 31 §10.

Attorney discipline, SupCt 9 §19.**Attorneys at law.**

Rules of professional conduct.

Attorney as witness, SupCt 8 ProfCond 3.7.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

Judges.

Code of judicial conduct.

Character witnesses.

Prohibition of judge serving as character witness, SupCt 10 JudCondCanon 3 (3.3).

WITNESSES —Cont'd**Mental health.**

Fees.

Reimbursement of costs in mental health proceedings, SupCt 15.

Post-conviction procedure.

Evidentiary hearing, SupCt 28 §8.

State board of law examiners.

Subpoena power, SupCt 7 §12.13.

WORKERS' COMPENSATION

APPELLATE PROCEDURE, SupCt 51.

Discretionary review.

Supreme court review in lieu of panel review, SupCt 51 §2.

Interlocutory and extraordinary appeals.

Supreme court rulings, SupCt 51 §4.

Special workers' compensation appeals panel.

Referrals to panel, SupCt 51 §1.

Supreme court review of panel decision, SupCt 51 §3.

RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF JUDICIAL CONDUCT

[As Approved By The Board On August 22, 2012]

TABLE OF CONTENTS

Rule

1. MEETINGS
 - § 1. Time and Place of Meeting
 - § 2. Notice of Meeting
 - § 3. Quorum
2. CHAIRPERSON OF THE BOARD
 - § 1. Chairperson
 - § 2. Vice-Chair
 - § 3. Chairperson — Duties
3. PANELS: RECUSAL AND REPLACEMENT
4. DISCIPLINARY COUNSEL
 - § 1. Hiring
5. COMPLAINTS & RESPONSES
 - § 1. Written Complaints
 - § 2. Other Sources
 - § 3. Judge's Response to be in Writing
6. INVESTIGATIVE PANELS
 - § 1. Designation of Investigative Panels
 - § 2. Meetings of Investigative Panels
 - § 3. Frivolous or Unfounded Complaints
 - § 4. Formal Charges
 - § 5. Consensus by Investigative Panels
7. SANCTIONS
 - § 1. Hearing Panel — Sanctions Consented by Judge
 - § 2. Investigative Panel — Sanctions by Consent
8. CONFIDENTIALITY
9. AMENDMENT OF RULES
10. RECORDS RETENTION POLICY.

Compiler's Notes. Acts 2012, ch. 819, § 6 provided that: (a) All rules of the court of the judiciary in effect on July 1, 2012, shall remain in full force and effect as rules of the board of judicial conduct until modified or repealed by the board of judicial conduct.

(b) The initial rules adopted by the board of judicial conduct shall serve as the temporary rules of the board. The temporary rules shall remain in effect until such time as approved or not approved by the general assembly, with the board's chairperson presenting the rules, during the first session of the One Hundred Eighth

General Assembly using the same procedure set out in § 16-3-404 for rules of court. If approved, the rules shall become the permanent rules of the board. All subsequent modifications or additions to such rules shall be approved by the general assembly in accordance with the procedures set forth in § 16-3-404.

The Rules of Practice and Procedure of the Board of Judicial Conduct, as promulgated by order filed on August 12, 2012, were ratified by House Resolution 38 and Senate Resolution 15.

Cross-References. Statutory provisions

covering the creation, powers and panels of the Board of Judicial Conduct, T.C.A. title 17, chapter 5.

RULE 1. MEETINGS.

Sec. 1. Time and Place of Meeting. — The Court shall meet at 10:00 o'clock a.m. on the fourth (4th) Wednesday in February and the fourth (4th) Wednesday in August in the conference room of the Administrative Office of the Courts and at such other times and places as the chairperson, or a majority of the members of the Board, may deem necessary. Members finding it more convenient may also attend the meeting by video or phone conference.

Sec. 2. Notice of Meeting. — The chairperson of the Board shall give a minimum of ten (10) days' notice of the time and place of meetings to all members of the Board.

Sec. 3. Quorum. — Eight (8) members of the Board, whether meeting in person or by video or phone conference, shall constitute a quorum.

RULE 2. CHAIRPERSON OF THE BOARD.

Sec. 1. Chairperson. — The Board, at its meeting on the fourth (4th) Wednesday in August of each year, shall elect a chairperson to serve for a period of one (1) year. The chairperson shall be elected from the members of the Board by a majority present and voting. The chairperson may be removed by a two-thirds vote of the members of the Board, with or without cause.

Sec. 2. Vice-Chair. — The Board, at its meeting on the fourth (4th) Wednesday in August of each year, shall elect a vice-chair to serve for a period of one (1) year. The vice-chair shall be elected from the members of the Board by a majority present and voting. The vice-chair may be removed by a two-thirds vote of the members of the Board, with or without cause.

If at any meeting the chairperson is not present, the vice-chair shall preside. If the chairperson is recused with respect to a matter, the vice-chair shall act as chairperson with respect to such matter.

Sec. 3. Chairperson — Duties. — In addition to the duties and responsibilities set forth in Tenn. Code Ann title 17, chapter 5, the chairperson shall preside at all meetings of the Board and at trials. The chairperson shall rule upon the admission or exclusion of evidence. However, the chairperson's ruling upon the admission or exclusion of evidence may be appealed to the full hearing panel. The chairperson and only the chairperson shall be the spokesperson for all matters pending before the Board, except that if the chairperson is recused with respect to a matter pending before the Board, the vice-chair and only the vice-chair shall be the spokesperson for the Board with respect to such matter. After the trial of any matter the chairperson shall write or shall designate a member of the hearing panel that heard the matter to write the majority opinion. Any member of the hearing panel that heard the matter may

write a concurring or dissenting opinion. The chairperson shall have such other duties and responsibilities as are necessary in fulfilling the office.

RULE 3. PANELS: RECUSAL AND REPLACEMENT.

(a) *Hearing Panel.* The chairperson shall divide the members of the Board into three hearing panels of six (6) members each (some members of the Board to be included as members of more than one hearing panel out of necessity), in such a way that each panel is composed of at least one judge, attorney and public member, if possible. The first panel shall be composed of six (6) members who do not reside in the eastern grand division, the second panel shall be composed of six (6) members who do not reside in the middle grand division, and the third panel shall be composed of six (6) members who do not reside in the western grand division. Upon the filing of formal charges, the chairperson shall assign to that matter, for the purpose of hearing pre-trial motions, approving or rejecting offers of settlement, or rendering a verdict after trial, the panel whose members do not reside in the grand division in which the accused judge resides. If a member of 3 that hearing panel is recused from the hearing of that matter, either because that member served on the investigative panel for that complaint, cannot be present for the hearing, was an attorney who has personally appeared before that judge or has recused for personal reasons, then the chairperson shall designate a temporary replacement by an order signed by a majority of the members of the hearing panel for the matter. The temporary replacement shall not be limited to members of the Board or persons residing outside the grand division in which the judge resides. However, in making such temporary designation, due regard will be given to the status of the member replaced, to the end that the contemplated composition and balance of the hearing panel for the matter be maintained.

(b) *Investigative Panel.* If a member of an investigative panel is recused from the hearing of any matter, then the chairperson shall designate a temporary replacement by an order signed by the chairperson. In making such temporary designation, due regard will be given to the status of the recusing member to the end that the contemplated composition and balance of the investigative panel for the matter be maintained.

(c) *Special Investigative Panel.* The chairperson shall appoint a standing special investigative panel to handle complaints made against judges who are current members of the Board. The members of this special panel shall not be current members of the Board and their names shall not be made known to the members of the Board. Any complaint filed against the chairperson shall be handled by a special panel appointed by the vice-chair.

RULE 4. DISCIPLINARY COUNSEL.

Sec. 1. Hiring. — The appointment or retention of disciplinary counsel shall be made only by a majority of the Board. However, the chairperson or one or more members of the Board designated by the chairperson may handle preliminary matters relating to hiring disciplinary counsel, including, but not limited to, advertising the position, receiving and reviewing resumes, screening applicants and conducting interviews.

Cross-References. General powers of the disciplinary counsel, T.C.A. § 17-5-301.

RULE 5. COMPLAINTS & RESPONSES.

Sec. 1. Written Complaints. — Complaints should be reduced to writing and sworn to before a notary public or by an officer authorized to administer oaths under Tennessee law. Complaints must state with reasonable particularity the factual basis of the complaint. Complaints are filed with Disciplinary Counsel at an address designated by the Board and posted on its website.

Sec. 2. Other Sources. — Disciplinary Counsel is authorized to investigate anonymous complaints or information coming from sources other than a written complaint, provided Disciplinary Counsel deems the information sufficiently credible or verifiable through objective sources.

Sec. 3. Judge's Response to be in Writing. — A judge's response to an initial complaint is to be reduced to writing but is not required to be under oath. Responses filed by others on behalf of the judge are to be reduced to writing and sworn to before a Notary Public or by an officer authorized to administer an oath under Tennessee law. The judge's response is to be filed with Disciplinary Counsel.

RULE 6. INVESTIGATIVE PANELS.

Sec. 1. Designation of Investigative Panels. — The chairperson shall designate such investigative panels as in the chairperson's discretion are necessary to the efficient operation of the Board. Each investigative panel shall be comprised of three members of the Board, and a member may serve on more than one investigative panel. The chairperson shall not serve as a member of any investigative panel. In appointing the investigative panels, the chairperson shall give due consideration to the composition of each panel so that to the extent feasible, public members, practicing attorneys and judges of various courts are represented on each panel.

Each of the members of the various investigative panels may be from the same geographic region of the State so as to promote communication and meetings among panel members. The chairperson may designate alternate members to serve on investigative panels in the event that a member of an investigative panel is recused from considering a particular matter.

Sec. 2. Meetings of Investigative Panels. — (a) *Meetings of Investigative Panels.* Promptly upon receipt of a complaint, report and recommendations from the disciplinary counsel, the investigative panel shall review the matter. The meeting may be conducted in person, by telephone conference call or by e-mail, provided that if the meeting is conducted by telephone conference call, every member of the panel must be able to hear and to speak to every other member of the panel.

(b) *Initial Review of Complaint.* Upon receipt of a complaint or file from the disciplinary counsel, an investigative panel shall review the matter and shall:

- (i) authorize a full investigation;
- (ii) give further instructions to Disciplinary Counsel; or
- (iii) dismiss the complaint.

(c) *Review after Full Investigation.* When an investigative panel has authorized a full investigation of a complaint or matter, then promptly upon its receipt of the disciplinary counsel's report of the investigation and recommendation, the investigative panel shall review the report and recommendations and shall:

- (i) approve the recommendations of disciplinary counsel;
- (ii) modify the recommendations of disciplinary counsel; or
- (iii) disapprove the recommendations of disciplinary counsel.

(d) *Action of Investigative Panel after Investigation.* After investigation and upon determining that there is probable cause to believe that a judge has committed a judicial offense, the investigative panel shall either:

- (i) direct disciplinary counsel to file formal charges against the judge; or
- (ii) direct disciplinary counsel to attempt settlement upon a stated sanction approved by the investigative panel.

In the event the judge does not consent to a sanction agreed upon by the investigative panel, then the investigative panel shall direct disciplinary counsel to file formal charges against the judge.

Sec. 3. Frivolous or Unfounded Complaints. — In the event the investigative panel determines that the charges are frivolous or unfounded, or would not constitute misconduct or incapacity if true, or are beyond the permissible scope of the Board's inquiry, the investigative panel shall dismiss the charges. The matter will then be closed, and the Board's docket will recite the investigation and dismissal of a groundless complaint.

Cross-References. Frivolous or unfounded charges, T.C.A. § 17-5-305.

Sec. 4. Formal Charges. — If an investigative panel determines that there is reasonable cause to believe that a judge committed a judicial offense and the investigative panel directs that disciplinary counsel file a formal charge as provided in Tenn. Code Ann. § 17-5-304(e), then prior to the filing of the formal charge the investigative panel shall review and approve the form and content of such formal charge. Such formal charge shall be signed by disciplinary counsel and the members of the investigative panel who directed that the formal charge be filed.

Sec. 5. Consensus by Investigative Panels. — In the event that the members of an investigative panel are not able to reach a consensus after due consideration by meeting in person, via a conference call in which every member of the panel can hear and speak to every other member of the panel, or by e-mail, then the investigative panel may act upon the concurrence of two of its three members. In the event that no two members of an investigative panel concur in the decision, then the chairperson shall direct that the matter be assigned to another investigative panel for consideration. In the event the second investigative panel recommends the filing of formal charges, no

member of either the first investigative panel or the second investigative panel shall serve on the hearing panel for such matter.

RULE 7. SANCTIONS.

Sec. 1. Hearing Panel — Sanctions Consented by Judge. — If a judge consents to a sanction as provided for in Tenn. Code Ann. § 17-5-307(g), and the hearing panel approves the sanction agreement, then the sanction agreement shall be reduced to writing and shall be approved by the judge, the judge's counsel (if any), disciplinary counsel and the hearing panel, and the sanction order shall be entered by the chairperson. Because a hearing panel may act only after formal charges have been filed against a judge, all sanctions administered by a hearing panel shall be public, whether or not the judge has consented to the sanctions.

Sec. 2. Investigative Panel — Sanctions by Consent. — If a judge, with the unanimous concurrence of the investigative panel, consents to a stated sanction before formal charges are filed, then the agreement shall be reduced to writing. The written agreement shall specify the nature of the behavior that resulted in the sanction. Private sanctions shall be confidential, and shall be given to the judge; a copy shall be retained in the files of the Board and may be used or released only as allowed in Tenn. Code Ann. § 17-5-301(f)(3).

RULE 8. CONFIDENTIALITY.

Except for hearings conducted pursuant to Tenn. Code Ann. § 17-5-308 or sanctions required to be public, matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with Disciplinary Counsel. However, nothing in the Rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under these Rules or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute or may adversely affect the administration of justice, the chairperson in his or her discretion may 1) confirm that an investigation is in progress, 2) clarify the procedural aspect of any proceedings, and 3) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

RULE 9. AMENDMENT OF RULES.

These rules may be amended from time to time by a majority of the members of the Board present and voting at any meeting, such amendments to take effect at such time as approved by the general assembly in accordance with the procedures set forth in Tenn. Code Ann. § 16-3-404 for rules of court.

RULE 10. RECORDS RETENTION POLICY.

When a complaint is received from an outside source or is created internally, both a physical and an electronic file shall be created. The physical file shall contain the complaint and all relevant documentation and correspondence pertaining to the complaint. Relevant portions of all complaints and documentation, including correspondence, shall be scanned and maintained in the electronic file. Correspondence generated by the office to either the complainant or the subject judge shall also be maintained in an electronic file by copying to the electronic file the correspondence in word processing format without the necessity of scanning the printed letterhead document. Voluminous public records such as transcripts, court dockets or pleadings filed in any court which are retrievable by other means need not be scanned into the electronic file. Disciplinary Counsel shall maintain a backup copy of all electronic files that shall be backed up daily and kept on storage media apart from the computer internal hard drive. A physical file may be destroyed by an appropriately secure method such as commercial shredding no sooner than one year after the closing and final action taken on that file, but the electronic file shall never be destroyed, regardless of the disposition of the case.

Board of Judicial Conduct

Index to Rules of Practice and Procedure of the Board of Judicial Conduct

A

AMENDMENT OF RULES BY BOARD,
JudCond 9.

**ANONYMOUS COMPLAINTS OR
INFORMATION,** JudCond 5.

C

CHAIR OF BOARD.

Duties, JudCond 2.

Election, JudCond 2.

Term, JudCond 2.

COMPLAINTS.

Anonymous complaints or information,
JudCond 5.

Frivolous or unfounded complaints.
Dismissal, JudCond 6.

Records, JudCond 10.

Written complaints, JudCond 5.

CONFIDENTIALITY OF INFORMATION.

**Confidential nature of matters before
board,** JudCond 8.

D

DISCIPLINARY COUNSEL.

Formal charges.

Direction to disciplinary counsel to file,
JudCond 6.

Hiring, JudCond 4.

F

FORMAL CHARGES.

Direction to disciplinary counsel to file,
JudCond 6.

**FRIVOLOUS OR UNFOUNDED
COMPLAINTS.**

Dismissal, JudCond 6.

H

HEARING PANELS.

Division of board into panels, JudCond 3.

Recusals and replacements, JudCond 3.

Sanctions.

Consent by judge to sanction, JudCond 7.

I

INVESTIGATIVE PANEL.

Consensus of panel.

Steps taken to develop, JudCond 6.

Designation, JudCond 6.

Formal charges.

Direction to disciplinary counsel to file,
JudCond 6.

Frivolous or unfounded complaints.

Dismissal, JudCond 6.

Meetings, JudCond 6.

Recusals and replacements, JudCond 3.

Sanctions.

Consent by judge to sanction, JudCond 7.

J

JUDGES.

Court of the judiciary.

Judicial conduct, board of.

Rules of practice and procedure, JudCond
1 to 10.

M

MEETINGS OF BOARD, JudCond 1.

P

PANELS, JudCond 3.

Investigative panel, JudCond 3, 7.

R

RECORDS.

Retention of records, JudCond 10.

RECUSAL.

Hearing panels.

Recusals and replacements, JudCond 3.

Investigative panel.

Recusals and replacements, JudCond 3.

RESPONSE TO COMPLAINTS, JudCond 5.

RULES OF COURT.

Court of the judiciary.

Judicial conduct, board of.

Rules of practice and procedure, JudCond
1 to 10.

S

V

SANCTIONS.

Consent by judge to sanction, JudCond 7.

SPECIAL INVESTIGATIVE PANEL.

Appointment, JudCond 3.

VICE-CHAIR OF BOARD.

Selection, JudCond 2.

RULES OF THE COURT OF APPEALS OF TENNESSEE

[ADOPTED MARCH 5, 2001

EFFECTIVE APRIL 2, 2001]

TABLE OF CONTENTS

Rule

- 1. Scope of the Rules
- 2. Organization and Operation of the Court
- 3. Record on Appeal
- 4. Abridgement of the Transcript of Evidence, Including Depositions
- 5. Preservation of Records
- 6. Briefs
- 7. Briefs in Domestic Relations Cases
- 8. Copies of Papers Filed
- 9. Disrespect of Courts
- 10. Memorandum Opinion
- 11. Publication of Opinions Where No Application for Permission to Appeal to the Tennessee Supreme Court Is Filed
- 12. Citation of Unpublished Opinions
- 13. Accelerated Civil Appeal
- 14. Appeals from Chancery and Circuit Courts in Termination of Parental Rights Cases and All Appeals from Juvenile Court
- 15. Filing Documents Under Seal

INTERNAL OPERATING PROCEDURES OF THE COURT OF APPEALS

Rule 1. Scope of the Rules. — (a) The procedures of this Court are governed by Tennessee Code Annotated and by the Tennessee Rules of Appellate Procedure (hereinafter Tenn. R. App. P.). These court rules are designed only to govern certain aspects of practice of this Court and supersede all previous rules of this Court.

(b) For good cause, including the interest of expediting a decision upon any matter, this Court, or the panel assigned to hear a particular case, may suspend the requirements or provisions of any of these rules in a particular case on motion of a party, or on its own motion, and may order proceedings in accordance with its discretion.

Compiler’s Notes. The former Rules of the Court of Appeals, the original rules of which were effective September 17, 1980, were replaced by rules adopted April 14, 1988, effective May 1, 1988, and subsequently replaced by rules adopted March 5, 2001, effective April 2, 2001.

Cross-References. Court of appeals, T.C.A. § 16-4-101 et seq.

Law Reviews. Tennessee Rules of Citation (Lewis L. Laska), 12 Mem. St. U. L. Rev. 547 (1982).

The Tennessee Court of Appeals: How Often It Corrects the Trial Courts — and Why, 68 Tenn. L. Rev. 557 (2001).

Rules of the Court of Appeals

NOTES TO DECISIONS

ANALYSIS

1. Application.
3. Conflicting Statutes Invalid.

1. Application.

Although a husband did not comply with Tenn. Ct. App. R. 7 by not including a chart displaying property values in his initial brief, the appellate court proceeded with a review of the marital property division, pursuant to Tenn. Ct. App. R. 1(b), because the husband included the chart in his reply brief. *Rountree v. Rountree*, 369 S.W.3d 122, 2012 Tenn. App. LEXIS 69 (Tenn. Ct. App. Feb. 1, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 355 (Tenn. May 16, 2012).

While the appellate court have suspended the requirements of its rules for good cause, the deficiencies in appellant's brief were too severe

to be overcome. Therefore, the court found that appellant's issues were waived. *Rawls v. Rawls*, — S.W.3d —, 2020 Tenn. App. LEXIS 158 (Tenn. Ct. App. Apr. 16, 2020).

3. Conflicting Statutes Invalid.

Dismissal of a parent's untimely appeal for lack of subject matter jurisdiction when the parent failed to file an appeal within ten days of the general sessions court's order of protection, as required by statute, was appropriate because the writ of error which the parent filed after the expiration of the time limit was no longer a viable method of appeal in the State of Tennessee. Furthermore, statutes providing for a period of more than ten days to file an appeal were not applicable to the matter. *New v. Dumitrache*, 604 S.W.3d 1, 2020 Tenn. LEXIS 264 (Tenn. June 29, 2020).

Rule 2. Organization and Operation of the Court. — (a) This Court shall be divided into three sections of four judges each. Unless otherwise designated by order of the presiding judge, the four judges residing in East Tennessee shall compose the Eastern Section; the four judges residing in Middle Tennessee shall compose the Middle Section; and the four judges residing in West Tennessee shall compose the Western Section.

(b) Unless otherwise ordered, all final judgments of this Court shall be remanded to the trial court for further proceedings, including collection of judgment and costs. [Amended by order filed and effective August 7, 2018.]

Compiler's Notes. In its order filed August 7, 2018, the Supreme Court provided: "In accordance with Rule 45 of the Tennessee Rules of Appellate Procedure, the Court hereby amends

Rule 2, section (a), of the Rules of the Court of Appeals of Tennessee in the form set out in the appendix to this order. This amendment shall be effective immediately."

Rule 3. Record on Appeal. — (a) The record on appeal shall be referred to as the record, which may be abbreviated "R". It shall be composed of volumes of not more than 150 pages each. All references to the record shall be by volume and page number.

(b) The record shall be captioned as in the trial court, except that the caption shall specify the position occupied by each party in the trial court and on appeal. For example, John Smith, plaintiff-appellant.

Rule 4. Abridgement of the Transcript of Evidence, Including Depositions. — (a) In all cases where the transcript of evidence, including depositions, exceeds 300 pages, this Court may order counsel to abridge such transcript. Included in the abridgement shall be such testimony, objections, motions, rulings of the trial court, etc., as are deemed sufficient to convey a fair, accurate and complete account of what transpired with respect to those issues that are the basis of appeal. The abridged transcript shall identify the witness, the party for whom he or she is testifying, whether direct or cross examination, and shall include testimony that properly identifies the witness.

(b) If less than all the testimony, or other material, on any page is to be considered, the material not to be considered shall be deleted or appropriately marked to so indicate. There shall also be shown the exhibit number of each exhibit relied upon by the parties. Exhibits themselves are not to be included in the abridged transcript. The abridged transcript shall be properly indexed and the pages shall be properly numbered as in the original transcript.

(c) The appellant shall designate such portions of the transcript to be included in the abridged transcript, and such designation shall be served on appellee with appellant's brief. The appellee shall designate such other parts of the transcript to be included in the abridged transcript and such designation shall be served on appellant with appellee's brief. The designations are to be by page numbers and, if less than the complete page where testimony is to be included, designated by line numbers. The designations shall not be filed in the cause.

(d) The appellant shall file the complete abridged transcript, including any additional parts not previously designated by either party, at the time that a reply brief is filed. If no reply brief is filed, the appellant shall file the abridged transcript within the time allowed for filing a reply brief. Only one copy of the complete abridged transcript is to be filed with the court clerk.

(e) Nothing in this rule shall be construed to authorize any alteration of the original trial transcript, which shall be and remain a part of the record on appeal.

(f) The cost of the abridgment shall be governed by Tenn. R. App. P. 40.

Rule 5. Preservation of Records. — (a)(1) Except as provided in subsection (b) of this rule, after a record has been filed, it shall not be taken from the clerk's office except by counsel of record in the case, and only with the clerk's permission. Records may not be removed from the court archives by anyone for any purpose except on order of a judge of this Court for good cause shown.

(2) The clerk shall not permit any record to be taken from the clerk's office or the archives without taking a proper receipt therefor.

(b)(1) Unless otherwise ordered, the clerk of this Court is authorized to dispose of the records and other papers associated with the cases decided by this Court subject to the following conditions: (a) all records and other papers shall be maintained for at least six (6) months after the issuance of this court's mandate; (b) no record or other paper shall be disposed of until the clerk of the trial court and counsel of record for the parties or the parties themselves if they are proceeding pro se have been given at least thirty (30) days notice of the intended disposition; and (c) the manner of the intended disposition shall comply with the applicable statutes and rules governing the disposition of judicial records and exhibits.

(2) Any party receiving a notice of disposition in accordance with Section (b)(1) may object to the disposition of all or part of the records and other papers. Objections must be made in writing stating the basis for the objection and must be filed with the clerk of the Court within thirty (30) days following the date of the notice of disposition. If an objection is timely filed, the records and other papers shall not be disposed of without an order of this Court.

Notwithstanding the above, in any case in which there has been a remand by this Court to the trial court and either counsel of record for a party or the parties themselves if they are proceeding pro se request the original trial exhibits, the clerk of this Court shall return the original trial exhibits to the clerk of the trial court.

(3) If any panel of this Court determines that the record and other papers in a case to which it has been assigned has possible historical value, the panel may enter an order directing the clerk of the Court to transfer the record and other papers to the State Library and Archives for preservation or other disposition as the State Library and Archives deems appropriate.

History. [Amended by order filed September 3, 2015, effective June 17, 2015.]

Rule 6. Briefs. — (a) Written argument in regard to each issue on appeal shall contain:

(1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.

(2) A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.

(3) A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.

(4) A statement of each determinative fact relied upon with citation to the record where evidence of each such fact may be found.

(b) No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded.

(c) Where less than the full record is sufficient to convey a fair, accurate and complete account of the issues on appeal (as set out in Tenn. R. App. P. 24) and counsel for one of the parties desires to file a complete transcript of the proceeding in this Court, counsel may do so. However, this Court may require that party or counsel to bear the expense of the unnecessary part of the transcript and to furnish an appendix as provided in Tenn. R. App. P. 28.

(d) Extensions of time in excess of those provided for in Tenn. R. App. P. 29(a) will not be liberally granted by this Court. Any request for such extension shall be in the form of a written motion setting forth the reasons for the extension sought. Such motion shall be filed or presented to a member of this Court within the time initially allowed by Tenn. R. App. P. 29(a) for the doing of the act for which an extension is sought.

NOTES TO DECISIONS

ANALYSIS

1. Content of Brief.
2. Waiver.
3. Arguments Considered.

1. Content of Brief.

In a breach of contract case, where one party failed to comply with T.R.A.P. 27 and Tenn. Ct. App. R. 6(b) relating to certain issues, they were waived on appeal, as the brief contained nothing more than bare assertions of error since there were no citations to the record, arguments, citations to case law, or any other authority indicating why the trial court's decision was erroneous; moreover, this was not a proper case for suspension of the rules. *Bailey v. Champion Window Co. Tri-Cities, LLC*, 236 S.W.3d 168, 2007 Tenn. App. LEXIS 249 (Tenn. Ct. App. Apr. 24, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 859 (Tenn. Sept. 17, 2007).

Father's appeal of an order modifying a permanent parenting plan to include payment for children's private school tuition was dismissed because the father's brief failed to comport with T.R.A.P. 27 and Tenn. Ct. App. R. 6 when the brief listed only one case that was not actually cited in the brief, which was a violation of T.R.A.P. 27(a)(2), and the "statement of the facts" section of the brief did not set forth all facts relevant to the issues presented and did not contain the necessary citations to the record; the father failed to include any facts regarding the costs of the children's private school tuition or the parties' respective incomes, and the argument section of the brief contained no citations to legal authority in support of the father's allegations in contravention of the requirements set out in T.R.A.P. 27(a)(7) and Tenn. Ct. App. R. 6(a) and (b). *Chiozza v. Chiozza*, 315 S.W.3d 482, 2009 Tenn. App. LEXIS 793 (Tenn. Ct. App. Nov. 20, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 540 (Tenn. May 20, 2010).

In a proceeding terminating the father's parental rights, the father's entire transcript from his sexual-battery criminal trial was admitted into evidence. Although, in his brief, the father disputed the unavailability of the witnesses on appeal under Tenn. R. Evid. 804(a), (b), it appeared that the father did not raise the issue at the trial level. Because it appeared that he did not object to the availability of the witnesses nor did he provide the appellate court with a citation to where he did so, the appellate court was unable to review the issue on appeal. *Dep't of Children's Serv. v. Hood*, 338 S.W.3d 917, 2009 Tenn. App. LEXIS 894 (Tenn. Ct. App. Dec. 30, 2009), appeal denied, *In re Casandra H.*, — S.W.3d —, 2010 Tenn. LEXIS 244 (Tenn. Mar. 15, 2010), cert. denied, *Hood v.*

Tenn. Dep't of Children's Servs., 562 U.S. 879, 131 S. Ct. 196, 178 L. Ed. 2d 118, 2010 U.S. LEXIS 6541 (U.S. 2010).

In a medical malpractice case, it was not shown that the use of power point presentations in opening and closing argument was inappropriate because counsel did not provide citations to the record as to where an alleged prejudice was recorded. *Stanfield v. Neblett*, 339 S.W.3d 22, 2010 Tenn. App. LEXIS 373 (Tenn. Ct. App. June 4, 2010), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 39 (Tenn. Jan. 13, 2011).

Although there were profound deficiencies in a pro se mortgagor's appellate brief, T.R.A.P. 27(a) and Tenn. Ct. App. R. 6(a) and (b), the appellate court exercised its authority under T.R.A.P. 2 to consider the appeal because there was only one dispositive issue: whether the trial court erred in dismissing the mortgagor's complaint without prejudice based on his failure to plead fraud with particularity. *Diggs v. Lasalle Nat'l Bank Ass'n*, 387 S.W.3d 559, 2012 Tenn. App. LEXIS 347 (Tenn. Ct. App. May 30, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 763 (Tenn. Oct. 17, 2012).

Because a patient, who appealed pro se, failed to comply with the basic briefing requirements set out in the appellate rules, in that the patient's appellate brief was largely incoherent as the patient neither developed the patient's arguments, nor cited authority to support the patient's positions, the appellate court could not ascertain the gravamen of the patient's arguments. Accordingly, due to the court's inability to reach the substantive issues, dismissal of the patient's appeal was appropriate. *Lacy v. Vanderbilt Univ. Med. Ctr.*, — S.W.3d —, 2019 Tenn. App. LEXIS 164 (Tenn. Ct. App. Apr. 1, 2019).

In an action for negligence per se and invasion of privacy through the unauthorized access and disclosure of confidential medical records, plaintiff waived her argument related to the statute of limitations and misapplication of the discovery rule because plaintiff's brief failed to comply with the procedural rules for briefs by, *inter alia*, failing to set forth an argument or facts relevant to the trial court's dismissal of her complaint under Tenn. R. Civ. P. 8.01, which was an independent basis for dismissal. *Prewitt v. St. Thomas Health*, — S.W.3d —, 2021 Tenn. App. LEXIS 157 (Tenn. Ct. App. Apr. 14, 2021).

2. Waiver.

Even assuming that the record did contain a ruling on a city's motion for protective order, the failure of an unsuccessful bidder on a contract for a street resurfacing project to provide appropriate citations regarding this matter resulted in a waiver of the issue. *Duracap Asphalt Paving Co. v. City of Oak Ridge*, 574 S.W.3d 859, 2018 Tenn. App. LEXIS 526 (Tenn. Ct. App. Sept. 6, 2018).

Health club member waived the issue of gross negligence on the part of a health club because the member's appellate brief did not provide citations to facts that supported the member's contention that the health club was grossly negligent. *Boswell v. YMCA*, — S.W.3d —, 2019 Tenn. App. LEXIS 160 (Tenn. Ct. App. Mar. 29, 2019).

Dismissal of an appeal by a pro se appellant was appropriate because the appellant waived the appellant's right to an appeal due to the appellant's profound failure to comply with the basic requirements for an appellate brief as the appellant's appellate brief lacked a proper statement of the case, statement of facts, and argument. *Doe v. Davis*, — S.W.3d —, 2019 Tenn. App. LEXIS 444 (Tenn. Ct. App. Sept. 6, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 109 (Tenn. Feb. 20, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 86 (Tenn. Feb. 27, 2020).

Because a truck driver provided no argument or citation of authority in support of his argument, and there was nothing in the record indicating that the issue was raised in the trial court, the issue was waived. *Riebsame v. Schemel*, — S.W.3d —, 2019 Tenn. App. LEXIS 469 (Tenn. Ct. App. Sept. 24, 2019).

Issue was waived because a truck driver provided no argument or citation of authority in support of the issue. *Riebsame v. Schemel*, — S.W.3d —, 2019 Tenn. App. LEXIS 469 (Tenn. Ct. App. Sept. 24, 2019).

When a trial court in a health care liability action granted summary judgment to a hospital on two alternative, independent grounds, because no argument was made on appeal by a surviving spouse to challenge one of the distinct grounds for summary judgment, the appellate court considered the argument waived and affirmed without reaching the substantive merits of the grounds relied upon by the trial court. *Lovell v. Baptist Mem. Hospital-Memphis*, — S.W.3d —, 2020 Tenn. App. LEXIS 15 (Tenn. Ct. App. Jan. 16, 2020).

Although the husband in a divorce proceeding appealed to an appellate court raising a host of issues, the husband's brief was non-compliant with the Rules of the Tennessee Court of Appeals and the Tennessee Rules of Appellate Procedure to such a degree that the husband's issues were waived. The deficiencies in the husband's brief were wide-ranging and

included citing very little legal authority, citing to the record only scarcely, and containing no citations to the record in the statement of facts. *Rawls v. Rawls*, — S.W.3d —, 2020 Tenn. App. LEXIS 158 (Tenn. Ct. App. Apr. 16, 2020).

Circuit court properly dismissed a pro se injured customer's action against a grocery store because he waived any issues he might have attempted to raise on appeal where his brief significantly failed to comply with the appellate rules since it lacked a statement of the issues, statement of the case, and statement of facts, it vaguely referred to the trial court's actions, but did not cite to any alleged error of the trial court in the record or any legal authority whatsoever, and did not provide any citations to the record. *Payne*, — S.W.3d —, 2020 Tenn. App. LEXIS 196 (Tenn. Ct. App. Apr. 29, 2020).

It is not acceptable on appeal merely to provide citations to the record of various responsive motions or others filings from the proceedings below where your position was presented to the trial court without developing an argument on appeal as to how the trial court erred in its ruling concerning those motions; here, in addition to a headnote in their brief, plaintiffs included four sentences of argument and a footnote directing the court to the record below for their arguments, and no supporting authority was provided. Plaintiffs' issues were waived. *Story v. Meadows*, — S.W.3d —, 2020 Tenn. App. LEXIS 591 (Tenn. Ct. App. Dec. 22, 2020).

3. Arguments Considered.

With respect to the issue of personal jurisdiction, the court of appeals exercised discretion to waive the rule, particularly in light of a truck driver's pro se status, the abbreviated record, and the clarity of the issue presented. *Riebsame v. Schemel*, — S.W.3d —, 2019 Tenn. App. LEXIS 469 (Tenn. Ct. App. Sept. 24, 2019).

Despite the deficiencies in the grandmother's brief, the court exercised its discretion under the rule and considered the substance of her appeal because public policy preferred courts to resolve cases on their merits rather than dismiss them due to procedural deficiencies, especially in cases involving the interests of children like this one. *In re Cassi J.*, — S.W.3d —, 2020 Tenn. App. LEXIS 258 (Tenn. Ct. App. June 2, 2020).

Rule 7. Briefs in Domestic Relations Cases. — (a) In any domestic relations appeal in which either party takes issue with the classification of property or debt or with the manner in which the trial court divided or allocated the marital property or debt, the brief of the party raising the issue shall contain, in the statement of facts or in an appendix, a table in a form substantially similar to the form attached hereto. This table shall list all property and debts considered by the trial court, including: (1) all separate

property, (2) all marital property, and (3) all separate and marital debts.

(b) Each entry in the table must include a citation to the record where each party's evidence regarding the classification or valuation of the property or debt can be found and a citation to the record where the trial court's decision regarding the classification, valuation, division, or allocation of the property or debt can be found.

(c) If counsel disagrees with any entry in the opposing counsel's table, counsel must include in his or her brief, or in a reply brief if the issue was raised by opposing counsel after counsel filed his or her initial brief, a similar table containing counsel's version of the facts.

Separate Property				
PROPERTY	APPELLANT'S VALUE	APPELLEE'S VALUE	VALUE FOUND BY TRIAL COURT	PARTY TO WHOM PROPERTY AWARDED
1. (Description)	\$ (Citation to record)	\$ (Citation to record)	\$ (Citation to record)	Husband or Wife (Citation to record)
Marital Property				
PROPERTY	APPELLANT'S VALUE	APPELLEE'S VALUE	VALUE FOUND BY TRIAL COURT	PARTY TO WHOM PROPERTY AWARDED
1. (Description)	\$ (Citation to record)	\$ (Citation to record)	\$ (Citation to record)	Husband or Wife (Citation to record)
Debt				
Debt	APPELLANT'S VALUE	APPELLEE'S VALUE	VALUE FOUND BY TRIAL COURT	PARTY TO WHOM PROPERTY AWARDED
1. (Description)	\$ (Citation to record)	\$ (Citation to record)	\$ (Citation to record)	Husband or Wife (Citation to record)
Total Separate Property awarded to Husband as valued by:			Husband Wife Trial Court	\$ \$ \$
Total Marital Property awarded to Husband as valued by:			Husband Wife Trial Court	\$ \$ \$
Total Debt allocated to Husband as valued by:			Husband Wife Trial Court	\$ \$ \$
Total Separate Property awarded to Wife as valued by:			Husband Wife Trial Court	\$ \$ \$
Total Marital Property awarded to Wife as valued by:			Husband Wife Trial Court	\$ \$ \$
Total Debt allocated to Wife as valued by:			Husband Wife Trial Court	\$ \$ \$

Rules of the Court of Appeals

NOTES TO DECISIONS

ANALYSIS

1. Failure to Comply.
2. No Waiver.

1. Failure to Comply.

Wife's challenge to a trial court's division of marital property was waived because the wife failed to include a chart regarding property values in her appellate brief, as required by Tenn. Ct. App. R. 7; even if the appellate court excused the wife's failure to comply with Rule 7, the issue was waived because the wife failed to cite any applicable law in her brief supporting her arguments regarding the division of marital property, as required by T.R.A.P. 27(a). *Forbess v. Forbess*, 370 S.W.3d 347, 2011 Tenn. App. LEXIS 654 (Tenn. Ct. App. Dec. 9, 2011), rehearing denied, 370 S.W.3d 347, 2012 Tenn. App. LEXIS 927 (Tenn. Ct. App. Jan. 10, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 245 (Tenn. App. Apr. 12, 2012).

Although a husband did not comply with Tenn. Ct. App. R. 7 by not including a chart displaying property values in his initial brief, the appellate court proceeded with a review of the marital property division, pursuant to Tenn. Ct. App. R. 1(b), because the husband included the chart in his reply brief. *Rountree v. Rountree*, 369 S.W.3d 122, 2012 Tenn. App. LEXIS 69 (Tenn. Ct. App. Feb. 1, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 355 (Tenn. May 16, 2012).

Wife's claim that a trial court erred in eliminating the husband's postjudgment interest obligation on an alimony in solido award was rejected where the appellate court could not view the trial court's ruling regarding property the husband owned with his father in isolation, and neither party had presented the appellate court with a table that complied with Tenn. Ct. App. R. 7. *Tarver v. Tarver*, — S.W.3d —, 2019 Tenn. App. LEXIS 128 (Tenn. Ct. App. Mar. 13, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 429 (Tenn. Aug. 21, 2019).

Because of a husband's failure on appeal to fully comply with the requirements in regard to the provision in the husband's brief of tables of property and debt and their valuations, the husband's issues related to the classification, valuation, and division of property were deemed waived. The body of the husband's brief included tables, but the tables were only reproductions of tables from the wife's post-trial brief or tables reflecting the impact of the court's division of property and also a table showing marital expenditures. *Stearns-Smith v. Smith*,

— S.W.3d —, 2019 Tenn. App. LEXIS 372 (Tenn. Ct. App. July 31, 2019).

Husband had waived all issues related to division of marital property as he had not complied with Tenn. Ct. App. R. 7. *Sullivan v. Sullivan*, — S.W.3d —, 2019 Tenn. App. LEXIS 492 (Tenn. Ct. App. Oct. 4, 2019).

Husband's failure to comply with the rule resulted in the waiver of the issue of the division of the marital property. *Henry v. Henry*, — S.W.3d —, 2020 Tenn. App. LEXIS 84 (Tenn. Ct. App. Feb. 26, 2020).

Although the husband in a divorce proceeding appealed to an appellate court raising a host of issues, the husband's brief was non-compliant with the Rules of the Tennessee Court of Appeals and the Tennessee Rules of Appellate Procedure to such a degree that the husband's issues were waived. The husband's failure to include a table of the property or debt at issue was fatal to the husband's issues pertaining to the valuation, classification and division of property, as well as debts. *Rawls v. Rawls*, — S.W.3d —, 2020 Tenn. App. LEXIS 158 (Tenn. Ct. App. Apr. 16, 2020).

Husband waived the issue of the distribution of the marital debt in a divorce through the husband's failure to not include the required table in the husband's brief. Furthermore, no good cause was discerned for suspension of the requirement. *Adams v. Adams*, — S.W.3d —, 2020 Tenn. App. LEXIS 199 (Tenn. Ct. App. Apr. 29, 2020).

In a divorce action, the wife's decision to ignore the table requirement and include in her reply brief a limited table of only the property at issue was not sufficient to comply with the table requirement and resulted in waiver of all issues related to the table requirements. *Abner v. Abner*, — S.W.3d —, 2020 Tenn. App. LEXIS 423 (Tenn. Ct. App. Sept. 18, 2020).

Father provided no reason for the court to suspend the requirements of the rule, and thus his issue concerning the valuation and award of the marital home to the mother was waived. *Swick v. Swick*, — S.W.3d —, 2021 Tenn. App. LEXIS 120 (Tenn. Ct. App. Feb. 25, 2021).

2. No Waiver.

Husband's appeal was limited to the narrow issue of the classification of the parties' home as the wife's separate property; under these circumstances, the court exercised its discretion to consider the merits of the appeal, despite the husband's failure to comply with the rule. *Carter v. Browne*, — S.W.3d —, 2019 Tenn. App. LEXIS 63 (Tenn. Ct. App. Feb. 4, 2019).

Rule 8. Copies of Papers Filed. — (a) Except as required by this rule or by another statute or rule, the original of all papers filed with the clerk of this Court shall be accompanied by one (1) copy of the original paper being filed.

(b) The original of all briefs filed with the clerk of this Court shall be

accompanied by four (4) copies.

(c) The original of all applications for interlocutory appeals under Tenn. R. App. P. 9, extraordinary appeals under Tenn. R. App. P. 10, or motions for a stay or injunction pending appeal under Tenn. R. App. P. 7 shall be accompanied by one (1) copy.

Rule 9. Disrespect of Courts. — Any brief or written argument containing language showing disrespect or contempt for any court of Tennessee will be stricken from the files, and this Court will take such further action relative thereto as it may deem proper.

Rule 10. Memorandum Opinion. — This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Rule 11. Publication of Opinions Where No Application for Permission to Appeal to the Tennessee Supreme Court Is Filed. — (a) Opinions of this Court, including abridgements thereof, from which no application for permission to appeal to the Tennessee Supreme Court has been filed, shall be published only with the approval of this Court as provided for herein.

(b) An opinion of this Court from which no application for permission to appeal to the Tennessee Supreme Court has been filed shall be published only if, in the determination of the members of this Court, it meets one or more of the following criteria:

(1) The opinion establishes a new rule of law or alters or modifies an existing rule or applies an existing rule to a set of facts significantly different from those stated in other published opinions;

(2) The opinion involves a legal issue of continuing public interest;

(3) The opinion criticizes, with reasons given, an existing rule of law;

(4) The opinion resolves an apparent conflict of authority;

(5) The opinion updates, clarifies or distinguishes a principle of law; or

(6) The opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(c)(1) An opinion of this Court, or an abridgement thereof, from which no application for permission to appeal to the Tennessee Supreme Court has been filed may be submitted to this Court for consideration for publication only after the expiration of the period of time permitted by the Tennessee Rules of Appellate Procedure to apply to the Tennessee Supreme Court for permission to appeal. Along with the opinion, the author shall state the reasons why the publication of the opinion is appropriate.

(2) If within thirty (30) days of the date an opinion has been submitted to all members of this Court, seven (7) members have approved publication of the opinion, the presiding judge shall notify the author of the opinion in writing that the opinion may be published.

(3) Approvals or objections to the publication of an opinion shall be made in writing and shall be sent to the presiding judge within thirty (30) days after the opinion has been submitted to the members of this Court. Where no written response is received from a member of this Court within thirty (30) days, the lack of response shall be treated as an affirmative vote for publication. The presiding judge shall, upon request, share the substance of the responses with the author of the opinion.

(d) Any judge of this Court may make minor editorial changes in an opinion authored by that judge once the opinion has been filed. These changes may include corrections in spelling, punctuation, or syntax. However, any abridgement that significantly alters the sense or emphasis of an already filed opinion shall be submitted to this Court prior to publication.

(e) In cases wherein concurring or dissenting opinions have been filed, the author of the concurring or dissenting opinion shall determine whether the concurring or dissenting opinion should be published with the majority opinion or whether only the position of the concurring or dissenting judge should be noted.

Rule 12. Citation of Unpublished Opinions. — (a) A party is not required to furnish the court with a copy of an unpublished opinion if the unpublished opinion is available from an Internet-based electronic database (e.g., Westlaw or Lexis) and if the citation to the unpublished case includes both the appropriate citation to the electronic database and the information required by paragraph (b) of this Rule. The party citing an unpublished opinion shall, within five (5) days of a written request, provide a copy of the unpublished opinion to any other party. In the event an unpublished opinion cited by a party is not available from an Internet-based electronic database, a copy of the unpublished opinion, with the notation required by paragraph (b) of this Rule, shall be furnished to the court and all other parties by attaching it to the document in which it is cited.

(b) The citation to any unpublished decision relied on by a party, as well as the title page of any copy of a decision for which an electronic database citation is not available, shall contain either a notation that no appeal has been filed or a notation of the date and manner in which the application for permission to appeal has been decided. Where appropriate, this shall include a notation that an appeal has been applied for but has not been decided. [Adopted effective June 17, 2015.]

Rule 13. Accelerated Civil Appeal. — Counsel for parties to an appeal may stipulate that the appeal may be heard and considered by this Court as follows.

IN THE COURT OF APPEALS OF TENNESSEE

AT _____

]

]

]

]

STIPULATION FOR ACCELERATED CIVIL APPEAL

The undersigned counsel for the parties stipulate that this appeal may be heard and considered by the Court of Appeals as follows:

- 1. Procedures. Appeal procedures shall be followed according to applicable statutes and the Tennessee Rules of Appellate Procedure and the Rules of Civil Procedure, except as they may conflict with these stipulated procedures. No changes may be made to this form.
- 2. At Issue. These appeal procedures are no different than any other civil appeal until the briefs have been filed and the case is at issue.
- 3. Priority for Oral Argument. Oral argument, if requested, will be accelerated and set within 60 days after the case is at issue or 60 days after this stipulation is filed, whichever is later.

Check One:

- _____ Oral argument is requested.
- _____ Oral argument is not requested.

- 4. Oral Argument. Each party is entitled to oral argument as in any other civil appeal.
- 5. Oral Decision by Court. After arguments are presented, the court will take a short recess and confer. An oral decision will be made from the bench when the court reconvenes. Reasons for the decision will be stated by the court. If the court finds it is unable to rule without further deliberation, an oral decision will not be made, and the court will enter its written order as provided in paragraph 7.
- 6. No Written Opinion. A written decision in the form of a published opinion or unpublished memorandum is waived by the parties.
- 7. Written Order. The decision of the court will be incorporated in a written order following argument.
- 8. Review by Tennessee Supreme Court Waived. The Court of Appeals will consider a motion for rehearing as in any other civil appeal following the entry of the written order deciding the case. Review of the Tennessee Supreme Court is waived.

- 9. Suspension of Rules. The filing of this stipulation for an accelerated appeal shall be deemed to be a motion to suspend any of the rules under Tenn. R. App. P. 2, which may be in conflict with these procedures.
- At any time subsequent to the filing of this stipulation, either before or after oral argument, the court on its own motion may enter an order removing this case from the Accelerated Hearing Calendar and placing it on the Regular Calendar for disposition.

DATED this _____ day of _____, 20__.

Rules of the Court of Appeals

AT _____

1111

ENTER: This the _____ day of _____, 20____.

JUDGE

Inasmuch as petitioners did not raise the issue on appeal of the standing of the conservatee's adult child to object to attorney's fee petitions, the appellate court determined that the issue was waived. *In re Hudson*, 578 S.W.3d 896, 2018 Tenn. App. LEXIS 458 (Tenn. Ct. App. Aug. 10, 2018).

ii. For a document to be filed under seal in the appellate court pursuant to subdivision (b), the trial court must have made an individualized determination that the particular document should be filed under seal. A document will not be filed under seal in this court based solely on the stipulation of the parties or on a party's designation of the document as confidential pursuant to

a protective order.

iii. Where documents filed under seal in the trial court are included in the record on appeal, the trial court clerk shall place the sealed documents in a separate envelope with a copy of the trial court's sealing order on the cover.

iv. Where documents filed under seal in the trial court are first presented to this court by a party in support of an application or motion, the sealed documents shall be attached as an exhibit in a separate envelope with a copy of the trial court's sealing order on the cover.

c. **Documents Not Previously Filed in the Trial Court.** A document that has not been filed in the trial court may be filed under seal in this court only by an order of this court. The party seeking to file such a document must file a motion demonstrating that protection from disclosure is necessary and that the relief requested is the least restrictive means available to protect the confidential matters.

d. **Briefs, Applications, and Motions.**

i. Briefs, applications, and motions filed originally in this court will not be filed under seal absent a showing of extraordinary circumstances.

ii. Where a party deems it unavoidable to disclose protected information in a brief, application or motion, the party shall file a motion to seal those portions which must refer to protected information. The moving party shall have the burden of demonstrating that protection from disclosure is necessary and that the brief, application or motion cannot be adequately prepared by referring to sealed portions of the record without disclosing the protected information. Only those portions of the brief, application or motion which actually disclose protected information will be sealed.

iii. A party moving to seal a portion of a brief, application or motion shall lodge the complete brief, application or motion containing the confidential information and shall file a second, public brief, application or motion with the protected matters redacted. The complete brief, application or motion shall identify by typeface, brackets or other means those portions which are protected and have been redacted from the public version. Only the original and one copy of the public version need be filed.

e. **Lodging Under Conditional Seal.**

i. Parties who have filed in this court a motion to seal a document may lodge the document under a conditional seal by placing it in a separate envelope with "Conditionally Under Seal" on the cover. The clerk shall treat the document as sealed until the court rules on the motion to seal.

ii. If the motion to seal is denied, the clerk shall return the lodged document to the submitting party unless the submitting party notifies the clerk in writing within ten (10) days that the document should be filed.

iii. If the motion to seal is granted, the clerk shall attach a copy of the sealing order to the envelope.

f. **Documents Made Confidential or Sealed Pursuant to a Statute or Rule.** Documents made confidential or sealed pursuant to a statute or rule, including those records and briefs filed in appeals from juvenile courts subject to Tenn. Ct. App. R. 14, shall contain a prominent notation on their cover stating that they are confidential or sealed and indicating the authority for such protection. The trial court clerks shall ensure that the records on appeal

in such cases contain the appropriate notation.

g. Access to Sealed Documents. Unless otherwise provided by statute, rule or the order placing the documents under seal, documents filed under seal in this court may be examined or withdrawn only by:

- i. Counsel of record or their agents;
- ii. Judges of this court and their staff having need to examine the documents in the performance of their duties; and
- iii. Deputy clerks having need to examine the documents in the performance of their duties. [Adopted by order filed October 26, 2004.]

NOTES TO DECISIONS

ANALYSIS

1. Compliance.
2. Compelling Reasons.

1. Compliance.

Counsel expressed concern about disclosing a juvenile court record, but such records were open to inspection with permission, and counsel should have sought permission; the record should have been supplemented and the procedure for filing the record should have been complied with by counsel. *Ellithorpe v. Weis-*

mark, 479 S.W.3d 818, 2015 Tenn. LEXIS 827 (Tenn. Oct. 8, 2015).

2. Compelling Reasons.

Because appellant's medical records and her medical history constituted confidential information, was not relevant to her claims, and was not relied on by the trial court to make a decision in this case, appellant established a compelling reason for sealing her medical records and its confidential information. *Doe v. Brentwood Acad., Inc.*, 578 S.W.3d 50, 2018 Tenn. App. LEXIS 724 (Tenn. Ct. App. Dec. 11, 2018).

INTERNAL OPERATING PROCEDURES OF THE COURT OF APPEALS

1. Each section of this Court shall select its own presiding judge except that the presiding judge of the entire Court, who may also be referred to as the chief judge, shall preside over the section where he or she resides and over any panel of which he or she is a member.

2. Each section shall sit in panels of three judges each as assigned by the presiding judge of the section.

3. If a majority of this Court or any section or panel thereof shall fail to attend any session of the Court, a judge who is present, or the clerk in the absence of all judges, may adjourn the Court from day to day.

4. Sessions for hearing oral argument and for other needful purposes may be held by each section as determined by the presiding judge of the section.

5. Cases in each section shall be heard and assigned generally in the order received, but the presiding judge of the section shall control the docketing and assignment of cases.

6.

(a) This Court may consider and decide a case *en banc* when a majority of the members of this Court determine that consideration and determination by the full Court is warranted based upon the recent or pending release of an opinion which conflicts with a prior opinion of this Court that has not been reversed or disapproved by the Supreme Court. An *en banc* proceeding may be initiated by the recommendation of a majority of the judges on the panel issuing or preparing the conflicting opinion. Upon receipt of such recommendation, the presiding judge shall poll the members of this Court, and if a

majority of those members who are not disqualified from deciding the case vote to hold an *en banc* hearing, the presiding judge shall convene such hearing at a convenient time and place.

(b) Absent exceptional circumstances, all members of this Court shall participate in the *en banc* hearing unless disqualified for conflicts. The hearing shall proceed as scheduled notwithstanding the unavoidable absence of one or more judges. Any judge who is unavoidably absent from the hearing may participate in the determination of the case by reviewing the tape of the oral argument.

(c) If an opinion which conflicts with a prior opinion of this Court has been issued fewer than thirty (30) days before the issuing panel makes a recommendation for an *en banc* hearing, the issuing panel shall vacate and withdraw the conflicting opinion, pending the full Court's determination on whether to consider the case *en banc*. If the *en banc* hearing is called, the conflicting opinion shall not be issued. If not more than thirty (30) days has elapsed since the issuance of the earlier of the conflicting opinions, the panel issuing the earlier opinion shall also vacate and withdraw that opinion pending reconsideration by the full Court.

(d) After hearing and consideration *en banc*, the judgment of the majority of the members of this court participating in the case shall be entered as the judgment of this Court.

7. The presiding judge of this Court shall be elected pursuant to Tenn. Code Ann. § 16-4-104 at this Court's annual meeting for a one year term commencing on April 1 of each year. If for any reason the election for presiding judge has not taken place by April 1, the incumbent presiding judge shall continue to serve until the election takes place. The presiding judge shall serve at the will and pleasure of this Court.

8. This Court shall meet annually in January, or on such other date as the majority of this Court shall determine, at a time and place to be fixed by the presiding judge to discuss such court business as may lawfully come before it.

9. Within six (6) months after a case is assigned to a judge, he or she shall prepare a proposed opinion and circulate it to the other judges on the panel. Those judges shall review the circulated opinion within fourteen (14) days and respond to the authoring judge with comments, suggestions, questions, or intent to concur or dissent. If, after consultation with other panel members, a judge decides to prepare a separate concurring or dissenting opinion, any such separate opinion shall be circulated within twenty-eight (28) days of the date of circulation of the original opinion.

It is recognized that circumstances unique to the case, the judge, or the workload may result in deviations from these time lines. The presiding judge of each section, in consultation with the Presiding Judge of the Court, may waive or extend the time lines in appropriate circumstances. In addition, the Presiding Judge of the Court, in consultation with the section presiding judges, may implement appropriate remedial measures, in his or her discretion, to insure overall compliance with these internal operating procedures. [As amended September 17, 1980, and by order filed December 11, 1985, effective October 10, 1985, and by order entered June 5, 1987, and by order filed February 9, 1993, effective December 8, 1992, and by order effective March 5, 2001, and by order entered December 1, 2014.]

Compiler's Notes. By order of the court of procedure 1, effective February 26, 2014, and to appeals dated December 1, 2014, the internal add a new procedure 9, effective July 1, 2006. operating procedures were amended to revise

Index to Rules of the Court of Appeals of Tennessee

A

ABRIDGEMENT OF TRANSCRIPT OF EVIDENCE, Ct App 4.

ACCELERATED CIVIL APPEAL, Ct App 13.

AFFIRMANCE.

Memorandum opinions, Ct App 10.

AFFIRMANCE WITHOUT OPINION, Ct App 10.

ATTORNEYS AT LAW.

Admission to bar of court, Ct App 9.

B

BRIEFS, Ct App 6.

Disrespect of courts.

Stricken from files, Ct App 9.

Domestic relations cases, Ct App 7.

Sealed documents, Ct App 15.

C

CITATION OF UNPUBLISHED OPINIONS, Ct App 12.

COPIES.

Papers filed with clerk of court, Ct App 8.

D

DEPOSITIONS.

Abridgement of transcript of evidence, including depositions, Ct App 4.

DISRESPECT OF THE COURTS.

Briefs.

Generally.

See BRIEFS.

Stricken from files, Ct App 9.

DOMESTIC RELATIONS.

Brief in domestic relations cases, Ct App 7.

J

JUDGES.

Sections, Ct App 2.

JUDGMENTS.

Publication of opinions, Ct App 11.

Remand of final judgments to trial court, Ct App 2.

JUVENILE COURTS.

Appeals from juvenile courts, Ct App 14.

M

MEMORANDUM OPINIONS, Ct App 10.

MODIFICATION OF TRIAL COURT ACTIONS.

Memorandum opinion, Ct App 10.

O

OPINIONS.

Capital cases.

Affirmance without opinion, Ct App 10.

Citation of unpublished opinion, Ct App 12.

Memorandum opinions, Ct App 10.

Publication of opinions, Ct App 11.

ORGANIZATION OF COURT, Ct App 2.

P

PUBLICATION.

Opinions, Ct App 11.

R

RECORD ON APPEAL, Ct App 3.

Abridgement of transcript of evidence, Ct App 4.

Complete transcripts, Ct App 6.

Preservation of records, Ct App 5.

Summary judgments, Ct App 4.

REVERSAL.

Memorandum opinions, Ct App 10.

S

SCOPE OF RULES, Ct App 1.

SEALED RECORDS.

Filing documents under seal, Ct App 14.

Juvenile courts.

Appeals from juvenile courts, Ct App 14.

SECTIONS, Ct App 2.

T

TERMINATION OF PARENTAL RIGHTS.

Appeals from chancery and circuit courts in termination cases, Ct App 14.

TIME.

Extensions of time, Ct App 6.

U**UNPUBLISHED OPINIONS.**

**Citation of unpublished opinions, Ct App
12.**

**RULES OF THE COURT OF CRIMINAL APPEALS OF
TENNESSEE**

[EFFECTIVE MAY 3, 1982]

TABLE OF CONTENTS

Rule	
1.	Authority and Scope
2.	Suspension of Rules
3.	Terms
4.	Sessions
5.	Panels
6.	Settings
7.	Motions and Orders
8.	Extensions of Time, Continuances and Waivers of Oral Argument
9.	Matters to Next Session
10.	Inadequate Briefs
11.	Voluntary Dismissal
12.	Duties of Counsel with Regard to Appeal
13.	Dismissals for Failure to Prosecute
14.	Time for Argument
15.	Stay Orders
16.	Contempt for Willful Noncompliance with Rules
17.	Disrespect of Courts
18.	Admission of Attorneys
19.	Publication of Opinions — Citation of Unpublished Opinions
20.	Memorandum Opinion
21.	Capital Cases and Notice of Appeal
22.	Frivolous Appeals: Withdrawal of Appointed Counsel.

Court of Criminal Appeals

Rule 1. Authority and Scope. — (a) These rules are promulgated under authority of Rule 45 of the Tennessee Rules of Appellate Procedure and Tenn. Code Ann. § 16-5-106(b). They supersede all previous rules of this court.

(b) Procedure in this court is governed by the Tennessee Rules of Appellate Procedure, by the Rules of the Supreme Court of Tennessee applicable to criminal appeals, and by these rules.

Law Reviews. The Tennessee Court of Appeals: How Often It Corrects the Trial Courts — and Why, 68 Tenn. L. Rev. 557 (2001).

NOTES TO DECISIONS

1. Waiver. Defendant waived the issue by complaining in a paragraph with no citation to authority that prosecution witnesses spoke in the hall-	way outside the courtroom, against the sequestration rules/order of the court. Despite the waiver, defendant failed to prove this allegation with clear and convincing evidence because the
---	---

appellate court noted that the matter was brought to the attention of the trial court, which following a jury-out hearing, denied defendant's motion to exclude the testimony of the witnesses. *Gilbert v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 81 (Tenn. Crim. App. Feb. 7, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 275 (Tenn. June 19, 2019).

Rule 2. Suspension of Rules. — For good cause shown, this court may suspend the requirements of these rules.

Rule 3. Terms. — This court will sit without reference to formal terms and shall be deemed always open for the conduct of business.

Rule 4. Sessions. — Sessions shall be held at such times as the court directs. Unless otherwise ordered, the court will convene at 9:30 a.m. each day upon which cases are set for argument. Unless otherwise ordered, cases set for argument will be heard in the order in which they appear on the calendar. [Amended by order entered May 3, 1996, effective September 1, 1996; by order entered and effective January 10, 2005; and by order entered and effective June 23, 2009.]

Rule 5. Panels. — Unless otherwise ordered, the court will sit in panels of three judges as assigned by the presiding judge. The concurrence of a majority of the judges so sitting shall be necessary to constitute a decision of the court.

Rule 6. Settings. — The court will, in its discretion, from time to time, set all cases for submission and the order in which they will be heard.

Rule 7. Motions and Orders. — Motions in this Court shall be in conformity with Rule 22, Tennessee Rules of Appellate Procedure. The proponent of a motion is not required to submit a proposed order. [Amended by order filed and effective November 10, 2016.]

Rule 8. Extensions of Time, Continuances and Waivers of Oral Argument. — (a) Policy. — Delays in the final disposition of criminal appeals are a matter of increasing and justified concern. The policy of this court is to achieve prompt preparation and disposition of criminal cases. Accordingly, motions which delay the disposition of an appeal in this court are looked upon with disfavor.

(b) Extensions of Time. — The court will grant extensions of time in compliance with Rule 21(b), T.R.A.P. Requests for an extension of time shall be by motion in conformity with Rule 22, T.R.A.P., and shall be accompanied by an affidavit setting forth the reasons for the extension sought. The motion shall also state whether or not the opposing party consents to the extension of time.

(c) No Brief or Motion may be Filed with the Clerks of this Court after the Expiration of the Time for Filing as Provided in the Rules. — Such documents shall be lodged with the clerk with a written motion for permission to file the brief or motion after the expiration of the applicable time period. The motion to late-file should show good cause for suspension of the Rules in accordance with Rule 2, T.R.A.P. and Rule 2 of these Rules.

(d) Continuances of Oral Argument. — When a case is set for submission, it will not be continued or reset to the next docket except upon motion in

conformity with Rule 22, T.R.A.P. The motion must state whether or not the opposing party consents to the continuance. Motions for continuance of oral argument which are filed after the last Thursday before the case is set for oral argument will only be granted under exigent circumstances.

(e) **Waiver of Oral Argument.** — Counsel may waive oral argument after it has been requested by notifying the Clerk of this Court except where the request is made after the last Thursday before the case is set for submission to the Court. In such cases, counsel must file a written motion in conformity with Rule 22, T.R.A.P., which shall be accompanied by an affidavit stating that opposing counsel is aware of the waiver and has no objection. If opposing counsel does not agree to the waiver, the written motion will only be granted upon a showing of good cause. Moreover, in the event that counsel fails to comply with the requirements set forth in this rule, he or she may be subject to costs incurred by opposing counsel due to the waiver of oral argument. [As amended by order filed November 16, 1995, effective January 1, 1996.]

Comments. It is not contemplated that good cause will be met by a routine statement that counsel has been busy with other matters or that an extensive memorandum of law accompanies these routine motions. Motions for exten-

sions of time to file the transcript with the trial court clerk which are brought about by the inability of the court reporter to timely prepare the transcript shall be accompanied by an affidavit of the court reporter.

Rule 9. Matters to Next Session. — All motions and other matters filed in this court and not disposed of at the end of the session shall be automatically continued to the next session of the court.

Rule 10. Inadequate Briefs. — (a) If a brief does not substantially conform to the requirements of the Tennessee Rules of Appellate Procedure, the court may order the same stricken and direct the filing, within a fixed time, of a new brief, and it may impose costs or order payment by the offending attorney or party of costs in such amount as the circumstances require.

(b) Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.

Cross-References. Content of briefs, T.R.A.P. 27.

NOTES TO DECISIONS

ANALYSIS

- 1. Waiver.
- 2. Argument Waived.

1. **Waiver.**

Constitutional objections to testimony were waived where defendants cited no authority. *State v. Boling*, 840 S.W.2d 944, 1992 Tenn. Crim. App. LEXIS 384 (Tenn. Crim. App. 1992), appeal denied, — S.W.2d —, 1992 Tenn. LEXIS 530 (Tenn. Aug. 31, 1992).

Issue that evidence was insufficient to support a conviction for armed robbery was waived where defendant cited no authority to support

his complaint. *State v. Sanders*, 842 S.W.2d 257, 1992 Tenn. Crim. App. LEXIS 518 (Tenn. Crim. App. 1992).

Failure to articulate reasons for conclusionary statement will result in waiver of issue on appeal. *State v. Gray*, 960 S.W.2d 598, 1997 Tenn. Crim. App. LEXIS 544 (Tenn. Crim. App. 1997).

Failure to make appropriate references to the record in the argument portion of the brief and to cite relevant authority will ordinarily constitute a waiver of the issue. *State v. Schaller*, 975 S.W.2d 313, 1997 Tenn. Crim. App. LEXIS 1130 (Tenn. Crim. App. 1997).

Appellate consideration of issue was waived where defendant made only a cursory allega-

tion that police report was admissible without including any citation in his brief to decisional authority and making no acknowledgment of the general inadmissibility of police reports or attempt to explain how the report might fall outside the general rule of exclusion. *State v. Thompson*, 36 S.W.3d 102, 2000 Tenn. Crim. App. LEXIS 256 (Tenn. Crim. App. 2000).

Defendant contended that the trial court erred by not declaring a verdict of not guilty after the jury initially reported such; however, the issue was waived on appeal because it was not supported by citation to authorities as was required by Tenn. Ct. Crim. App. R. 10(b). *State v. Jordan*, 116 S.W.3d 8, 2003 Tenn. Crim. App. LEXIS 301 (Tenn. Crim. App. 2003).

Because defendant made no citation in her brief to authority in support of her argument concerning six of the items of evidence to which she objected to their admission, those six issues were deemed waived under Tenn. Ct. Crim. App. R. 10(b). *State v. Watson*, 227 S.W.3d 622, 2006 Tenn. Crim. App. LEXIS 259 (Tenn. Crim. App. 2006), appeal denied, *State v. Brooks*, — S.W.3d —, 2006 Tenn. LEXIS 620 (Tenn. July 3, 2006).

Defendant waived his claim on appeal that the trial court erred in admitting an investigating officer's testimony regarding the consistency of a child victim's statements because the only authority cited in defendant's brief was Tenn. R. Evid. 801 and Tenn. R. Evid. 803 when, at trial, defendant objected on lay opinion grounds only pursuant to Tenn. R. Evid. 701, and defendant was bound on appeal to the basis of his objection at trial pursuant to Tenn. R. Evid. 103(a); furthermore, defendant failed to cite authority to support his claim based on Tenn. R. Evid. 701 in his appellate brief as required by T.R.A.P. 27(a)(7), and therefore the appellate court considered the issue waived under Tenn. Ct. Crim. App. R. 10(b). *State v. Schiefelbein*, 230 S.W.3d 88, 2007 Tenn. Crim. App. LEXIS 138 (Tenn. Crim. App. Feb. 8, 2007), modified, 230 S.W.3d 88, 2007 Tenn. Crim. App. LEXIS 213 (Tenn. Crim. App. Mar. 7, 2007).

Because the state failed to cite any authority in its brief in support of its argument that even if the Goodman case provided a cognizable habeas corpus claim for the inmate, the stipulated facts provided that the kidnapping occurred through fraud, threat, or force, the claim was waived. *State v. Cook*, 250 S.W.3d 922, 2007 Tenn. Crim. App. LEXIS 736 (Tenn. Crim. App. Sept. 17, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 39 (Tenn. Jan. 28, 2008).

Probation revocation issue was treated as waived because in his appellate brief, defendant stated that he no longer wished to challenge the revocation of his probation; however, he did not ask the court of criminal appeals to dismiss the appeal. *State v. Barnett*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 142 (Tenn.

Crim. App. Mar. 6, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 352 (Tenn. July 18, 2019).

Because defendant did not support defendant's claims of ineffective assistance of trial counsel and appellate counsel with any argument or citations to the record or appropriate authorities in defendant's brief, the claims were waived. *McMath v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 345 (Tenn. Crim. App. June 10, 2019).

With regard to the sufficiency of the evidence to support an assault conviction, issues that were unsupported by argument, references to the record, and citations to authority were waived because although defendant alleged in his statement of the issue that the evidence was insufficient to support his convictions, his only argument pertained to the firearm offense. *State v. Tweedy*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 443 (Tenn. Crim. App. July 23, 2019).

Because defendant failed to support his argument with either citations to the record or relevant authorities, he waived the appellate court's consideration of his challenge to the sufficiency of the evidence. *State v. Harris*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 708 (Tenn. Crim. App. Nov. 5, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 236 (Tenn. Mar. 26, 2020).

Petitioner did not question counsel about his decision not to object during the post-conviction proceedings, which could have been a strategic one, plus he waived the issue by failing to include the appropriate references to the record; he was not entitled to post-conviction relief. *Winters v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 7 (Tenn. Crim. App. Jan. 9, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 383 (Tenn. June 4, 2020).

Nature of the issues for review and the reasons given by defendant for the delay in filing his notice of appeal did not merit waiver in the interest of justice defendant did not address in his brief any jail credits to which he claimed he was entitled other than those for his time at liberty; because defendant did not raise in the trial court the issue that evidence was improperly used to obtain the indictment, the issue was waived. *State v. Russell*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 17 (Tenn. Crim. App. Jan. 14, 2020).

Because defendant did not present any legal argument in his brief regarding the denial of his motion for an expert witness, the issue was waived. *State v. Reed*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 22 (Tenn. Crim. App. Jan. 16, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 288 (Tenn. Aug. 6, 2020).

Issues raised by defendant in defendant's brief were waived for failure to cite to the record, cite to authority, or include any argument to support the issues. *State v. Buford*, —

S.W.3d —, 2020 Tenn. Crim. App. LEXIS 40 (Tenn. Crim. App. Jan. 27, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 345 (Tenn. June 3, 2020).

Because petitioner's only claim of ineffective assistance of counsel on appeal was trial counsel's failure to make a motion for a change of venue, all other claims that were raised in petitioner's post-conviction petition and asserted by petitioner at the post-conviction hearing were waived. *Logan v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 139 (Tenn. Crim. App. Feb. 26, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 397 (Tenn. July 20, 2020).

Although defendant asserted in the heading of the sentencing issue in defendant's brief that the trial court erred in determining the length of defendant's sentence and by imposing consecutive sentencing, defendant made no argument in support of these claims. Accordingly, these issues were waived for appellate review. *State v. Jackson*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 353 (Tenn. Crim. App. May 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 454 (Tenn. Aug. 5, 2020).

Although defendant asserted that defendant was not prepared by defendant's counsel to go to trial, because defendant did not specify the particulars of how defendant was not prepared or what prejudice defendant suffered, the appellate court concluded that the issue was waived. *Davis v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 576 (Tenn. Crim. App. Aug. 25, 2020).

Petitioner did not properly raise the issue of ineffective assistance of counsel, as he failed to list ineffective assistance of counsel in his issues presented for review, plus he did not present any argument, citation to authority, or appropriate references to the record regarding this issue. *Harris v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 710 (Tenn. Crim. App. Nov. 3, 2020).

Issues in defendant's brief under the heading "Additional Claims of Petitioner to Be Considered" were waived because defendant cut and pasted verbatim from pages of briefs in support of prior post-conviction petitions and in these pages of defendant's brief, there were no citations to the post-conviction record. *Wicks v. State*, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 749 (Tenn. Crim. App. Nov. 20, 2020).

Defendant did not present any argument, citation to authority, or appropriate references to the record regarding the issue of defense counsel failing to cross-examine a police lieutenant about the destruction of the alleged murder weapon, but simply stated that counsel failed to cross-examine the lieutenant about the destroyed weapon. Accordingly, because defendant made no argument as to how this inaction by counsel was deficient or prejudiced defendant in any way, the issue was waived.

Wicks v. State, — S.W.3d —, 2020 Tenn. Crim. App. LEXIS 749 (Tenn. Crim. App. Nov. 20, 2020).

2. Argument Waived.

Defendant's brief was meager and almost inadequate to allow a meaningful review of the issue that defendant raised because her statement of the facts did not contain any reference to the record nor did it contain sufficient facts relevant to the issue defendant raised; additionally, defendant's argument did not contain any references to the record or the reasons why her contentions required appellate relief. *State v. McCullough*, — S.W.3d —, 2018 Tenn. Crim. App. LEXIS 268 (Tenn. Crim. App. Apr. 9, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 501 (Tenn. Aug. 9, 2018), overruled in part, *State v. Jones*, 589 S.W.3d 747, 2019 Tenn. LEXIS 505 (Tenn. Nov. 13, 2019).

Defendant's allegations of ineffective assistance of counsel were waived on appeal because defendant's quoted arguments were more like a statement of issues than argument on appeal. The failure to cite any legal authority in all of the arguments was sufficient in itself to justify waiver on appeal of all the issues. *Lawson v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 186 (Tenn. Crim. App. Mar. 26, 2019).

Defendant waived her claim that the trial court erred in allowing the State to cross-examine her regarding the conditions of her home because defendant did not support the issue with any argument or authority. *State v. Ray*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 263 (Tenn. Crim. App. Apr. 24, 2019).

Because defendant failed to support defendant's arguments that the trial court used an improper procedure to determine whether the criminal convictions of a late disclosed state witness were admissible and that the trial court erred by failing to determine whether defendant wished to waive defendant's right to have the jury affix a fine with citations to relevant authorities, it was waived. *State v. Ponder*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 504 (Tenn. Crim. App. Aug. 21, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 559 (Tenn. Dec. 5, 2019).

Although defendant made a one-sentence contention in defendant's brief that the trial court's exclusion of the recording of defendant's 911 call violated defendant's constitutional right to present a defense, the issue was waived because defendant failed to present any argument in defendant's brief to support defendant's claim. *State v. Waggoner*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 595 (Tenn. Crim. App. Sept. 24, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 126 (Tenn. Feb. 19, 2020).

Defendant waived consideration of issues regarding trial counsel's duty at trial to preserve issues for appeal by creating a record because

defendant failed to support them with sufficient argument and citation to the relevant authorities. *Adams v. State*, — S.W.3d —, 2019 Tenn. Crim. App. LEXIS 791 (Tenn. Crim. App. Dec. 20, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 218 (Tenn. Apr. 15, 2020).

Because defendant on appeal provided no argument or references to the record for the issues that trial counsel did not properly investigate the case, that defendant received no jail visits from trial counsel, and that trial counsel only talked to defendant twice, the issues were waived. *Mitchell v. State*, — S.W.3d

—, 2020 Tenn. Crim. App. LEXIS 682 (Tenn. Crim. App. Oct. 16, 2020).

Defendant waived review of defendant's claim of actual innocence because defendant failed to support the claim with argument, citation to authorities, or appropriate references to the record. Defendant's analysis on the issue consisted of one paragraph in which defendant did not cite to any facts or case law in support of the claim. *French v. State*, — S.W.3d —, 2021 Tenn. Crim. App. LEXIS 103 (Tenn. Crim. App. Mar. 23, 2021).

Rule 11. Voluntary Dismissal. — A motion or agreement by a criminal defendant for a voluntary dismissal of his appeal shall comply with Rule 15, T.R.A.P. In addition, a signed statement of the defendant which shows that he has been advised of his rights with regard to appeal and expressly waives said rights shall accompany the motion or agreement.

Rule 12. Duties of Counsel with Regard to Appeal. — Counsel who files a notice of appeal is responsible for representing the defendant on appeal and he shall be allowed to withdraw as counsel of record only for good cause shown and if application is made to this court when such counsel is not delinquent in his duties.

Rule 13. Dismissals for Failure to Prosecute. — The dismissal of an appeal for want of prosecution shall not limit the authority of this court, in an appropriate case, to take disciplinary action against defaulting counsel.

Rule 14. Time for Argument. — Each side shall be allowed a maximum of 20 minutes for argument, unless otherwise ordered by the court. The appellant may reserve rebuttal time by notifying the court before argument begins.

Rule 15. Stay Orders. — Orders for a stay of the mandate of this court pending certiorari to the United States Supreme Court shall not routinely be granted unless there is a showing of extraordinary need or a demonstration that a substantial question is to be presented to the United States Supreme Court. Petitions for stay orders will be presented to the author of the opinion of this court and will be granted only on the concurrence of the majority of the panel which considered the case.

Rule 16. Contempt for Willful Noncompliance with Rules. — For a willful noncompliance with any material and substantive requirement of these rules, an attorney, trial court clerk, court reporter, or other officer of the court may be held in contempt of court by this court after reasonable notice.

Comments. It is the spirit of this rule that noncompliance of a mere technical nature, e.g., size of paper, margins, etc., will not be used as a basis of contempt citations, but only a willful failure to comply with a substantive require-

ment of the rules which materially affects the orderly process of the appeal. Noncompliances contemplated by this rule include failure of the trial court clerk to file the record, failure of the court reporter to timely prepare a transcript of

the proceedings, and the failure of an attorney to file a brief.

NOTES TO DECISIONS

ANALYSIS

- 1. State's Duty to Preserve Evidence.
- 11. Scientific Tests.

1. State's Duty to Preserve Evidence.

Defendant was not entitled to relief due to missing audiotape of a controlled drug buy because it did not appear that the audiotape was exculpatory evidence the State of Tennessee had a duty to preserve. An officer identified defendant as the driver of car in which a drug transaction took place, and the State voluntarily dismissed the drug sale charge for the failure to preserve and did not mention the content of the interaction between defendant and a confidential informant until defendant brought the missing evidence to the jury's attention. *State v. Buford*, — S.W.3d —, 2020

Tenn. Crim. App. LEXIS 40 (Tenn. Crim. App. Jan. 27, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 345 (Tenn. June 3, 2020).

11. Scientific Tests.

Trial court did not abuse its discretion in defendant's trial for driving under the influence by denying defendant's motion for additional discovery in which defendant requested the Tennessee Bureau of Investigation's scientific reports for defendant's blood test because defendant failed to show that the scientific reports were material to the preparation of defendant's defense and because the State of Tennessee did not present the information in issue as evidence during trial. *State v. Shumacker*, — S.W.3d —, 2021 Tenn. Crim. App. LEXIS 60 (Tenn. Crim. App. Feb. 24, 2021).

Rule 17. Disrespect of Courts. — No argument or motion filed or made in this court shall contain language showing disrespect or contempt for any court of Tennessee.

Rule 18. Admission of Attorneys. — All attorneys licensed to practice law in this state are automatically admitted to practice as members of the bar of this court and no formal introduction to this court is required.

Rule 19. Publication of Opinions — Citation of Unpublished Opinions. — 1. (a) No opinion of the Court of Criminal Appeals shall be published unless it meets one or more of the following standards:

- (1) the opinion establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a set of facts significantly different from those stated in other published opinions;
 - (2) the opinion involves a legal issue of continuing public interest;
 - (3) the opinion criticizes, with reasons given, an existing rule of law;
 - (4) the opinion resolves an apparent conflict of authority whether or not the earlier opinion or opinions are reported;
 - (5) the opinion updates, clarifies or distinguishes a principle of law; or
 - (6) the opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.
- (b) No opinion shall be published if the Supreme Court of Tennessee grants an application for permission to appeal or concurs only in the result reached or otherwise directs that the opinion should not be published.
- (c) An opinion of the Court that meets one or more of the standards in subsection (a), and that is not otherwise barred from publication by any of the criteria in subsection (b), shall be published only if a majority of the Court votes affirmatively in favor of publication.

2. (a) No opinion shall be recommended for publication until the time has expired for the filing of an application for permission to appeal. The author of an opinion who recommends it for publication shall deliver a copy of the opinion to each member of the Court, along with a letter stating which of the standards of subsection 1.(a) are met. Within thirty (30) days of the receipt of an opinion recommended for publication, each member who agrees that the opinion should be published shall notify the presiding judge in writing. The failure of a member to respond shall be construed as a vote against publication of the opinion.

(b) The author of an opinion may recommend for publication any part of an opinion meeting one or more of the standards for publication specified in subsection 1.(a). The published part of the opinion shall indicate which part is unpublished. All factual and legal material that aids in the application or interpretation of the published part shall be in the published part. The author of an opinion may make minor editorial changes, including corrections in spelling, punctuation, syntax, or citations after an opinion has been filed.

(c) When the opinion is forwarded for publication the presiding judge shall indicate on its face the date the opinion was filed and shall also show whether permission to appeal was sought and, if sought, the date of its denial.

3. A separate concurring or dissenting opinion shall be published with the majority opinion if the majority of the Court vote affirmatively for publication of both opinions and the author of such separate opinion does not object in writing to the presiding judge within the time allowed for voting. A copy of the separate opinion shall be delivered to each member of the Court by the author of the majority opinion at the same time as the letter recommending publication of the majority opinion. The voting procedure shall be the same as provided in subsection 2. for the majority opinion. Absent such opinion being published with the majority opinion, the publication shall note only the fact of concurrence or dissent.

4. Unpublished opinions of the Court of Criminal Appeals may be cited in briefs and other documents filed with the Court, and a copy of the opinions may be attached to such filing, provided that multiple opinions are individually tabbed or indexed. The citation to an unpublished opinion shall include either a notation that no appeal to the Tennessee Supreme Court has been filed or a notation of the date and action taken by the Tennessee Supreme Court in ruling upon an application for permission to appeal. When appropriate, the citation shall include a notation that an application for appeal to the Tennessee Supreme Court is pending at the time of the filing with this Court. [As adopted by order entered September 1, 1988; amended by order filed February 1, 1993; by order filed June 2, 1997; and by order filed June 10, 2015.]

Compiler's Notes. The designations for the subsections and subdivisions in this rule have been printed with the designations as reflected in the order promulgated by the court.

Rule 20. Memorandum Opinion. — The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action is taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge, or

(b) The judgment rendered or action taken relates to a finding of guilt before the trial judge without a jury, or with a jury, and the evidence is sufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt, and

(2) No error of law requiring a reversal of the judgment or action is apparent on the record. The opinion in such case shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on in any unrelated case unless to establish a split of authority. [As adopted by order filed May 10, 1991; amended by order filed December 15, 2003.]

Rule 21. Capital Cases and Notice of Appeal. — In addition to the content requirements for a Notice of Appeal as set forth in Rule 3(f), T.R.A.P., the appellant shall prominently state on the notice, below the docket number, the phrase "CAPITAL CASE APPEAL." This requirement shall apply to both direct appeal and post-conviction capital cases. [Adopted by order filed April 22, 1997.]

Rule 22. Frivolous Appeals: Withdrawal of Appointed Counsel. — If, on direct appeal to this court, appointed counsel for an indigent defendant concludes, after a conscientious examination of the entire record and the applicable law, that the appeal is frivolous under *Anders v. California*, 386 U.S. 738 (1967), and that continued representation by counsel would violate the Code of Professional Responsibility, Rule 8, Rules of the Supreme Court, counsel may move the court in writing to permit withdrawal from further representation of the indigent defendant.

(A) Counsel's role as an advocate requires that counsel support the appeal to the best of counsel's ability. Counsel must function zealously and resolve all doubts and ambiguous legal questions in favor of the defendant. Counsel should not seek to withdraw from a case merely because he or she determines that the appeal lacks merit. Counsel should serve as both advocate and adviser to the client.

(B) A "frivolous" appeal is not merely one that is likely to be unsuccessful. It is one that is so readily recognizable as devoid of merit that there is little, if any, prospect that it can ever succeed. To be frivolous, an appeal must be so clearly untenable or manifestly insufficient that its character may be determined by a bare inspection of the record, without argument or research. An appeal is not frivolous when a substantial justiciable question can be identified from the whole record or any part of it, even though such question is unlikely to be decided other than as decided by the lower court.

(C) If counsel determines that an appeal is frivolous, counsel may file a motion to withdraw with this court. The motion must be accompanied by (1) a Rule 22 Brief in Support of motion to withdraw and (2) a complete transcript of all relevant proceedings. The mere statement by counsel that there were no errors of law below or that the appeal is without merit does not satisfy the requirements set forth herein. The Rule 22 Brief must contain an argument

section consisting of the following:

- (1) a list of all rulings adverse to the defendant made by the trial court on any objections, motions or requests made by either party, with an explanation as to why each adverse ruling is not a meritorious ground for appeal;
- (2) a discussion of the evidence introduced against the defendant;
- (3) a recitation of the trial court's rulings;
- (4) a briefing of any issue that might arguably support an appeal;
- (5) references to pertinent testimony and citations to the record; and
- (6) citations to legal authority supporting counsel's analysis and conclusions.

(D) Counsel shall furnish a copy of the motion to withdraw and Rule 22 Brief to the indigent defendant by certified mail, return receipt requested. The return receipt shall be filed with the clerk of this court.

(E) The indigent defendant shall, upon receipt of the motion to withdraw and Rule 22 Brief, be afforded thirty (30) days to submit a responsive brief raising any claims of error or additional points or supplementing any existing issues presented in counsel's Rule 22 Brief.

(F) After a full examination of the entire record, this court, through a motions panel, will proceed to determine (1) whether counsel has diligently searched the record for arguable claims and (2) whether the appeal is wholly frivolous. If it so finds, the court shall resolve the appeal in accordance with Rule 20 of the Tennessee Court of Criminal Appeals and grant counsel's motion to withdraw. The court shall notify the defendant of the right to file a *pro se* Application for Permission to Appeal with the clerk of the Tennessee Supreme Court within sixty (60) days after entry of final judgment. If, however, this court finds there to be legal points arguable on their merits and that the appeal is not frivolous, the court shall, at its discretion, either direct moving counsel to submit an advocate's brief on the merits or be allowed leave to withdraw.

(G) Failure to strictly comply with the requirements of this Rule will result in dismissal of the motion to withdraw. No motions to amend, modify or supplement the motion to withdraw or Rule 22 Brief so as to conform with the requirements of subsection (C) of this Rule will be granted.

(H) The filing of a motion to withdraw pursuant to this Rule, when accompanied by the required brief, shall suspend further proceedings on the appeal until this court rules on the motion to withdraw.

(I) The Attorney General is not required to file a brief in response to a Rule 22 Brief, unless ordered to do so by the court. [Adopted by order filed January 26, 2001; and amended by order filed December 15, 2003.]

Index to Rules of the Court of Criminal Appeals of Tennessee

A

APPEALS.

Attorneys at law.

Duties of counsel with regard to appeal, Ct Cr App 12.

Briefs, Ct Cr App 10.

Dismissal.

Failure to prosecute, Ct Cr App 13.

Voluntary dismissal, Ct Cr App 11.

ATTORNEYS AT LAW.

Admission to bar of court, Ct Cr App 18.

Appeals.

Duties of counsel with regard to appeal, Ct Cr App 12.

Argument.

Time for, Ct Cr App 14.

Contempt.

Willful noncompliance with rules, Ct Cr App 16.

Withdrawal of appointed counsel.

Frivolous nature of appeal as justification, Ct Cr App 22.

B

BRIEFS.

Inadequate briefs, Ct Cr App 10.

C

CAPITAL CASES.

Notice of appeal, Ct Cr App 21.

CONCURRING OPINIONS, Ct Cr App 19.

CONTEMPT.

Willful noncompliance with rules, Ct Cr App 16.

CONTINUANCES, Ct Cr App 8.

D

DISRESPECT OF COURTS, Ct Cr App 17.

DISSENTING OPINIONS, Ct Cr App 19.

F

FRIVOLOUS APPEALS.

Withdrawal of appointed counsel upon determination of frivolity, Ct Cr App 22.

J

JUDGES.

Panels, Ct Cr App 5.

M

MOTIONS, Ct Cr App 7.

Disrespect of court.

Prohibited, Ct Cr App 17.

N

NOTICE OF APPEAL.

Capital cases, Ct Cr App 21.

O

OPINIONS.

Citation.

Unpublished opinions, Ct Cr App 19.

Concurring or dissenting opinions, Ct Cr App 19.

Publication, Ct Cr App 19.

ORDERS OF COURT, Ct Cr App 7.

Affirmance of judgment or action by order, Ct Cr App 20.

Stay orders, Ct Cr App 15.

P

PANELS, Ct Cr App 5.

POSTPONEMENTS, Ct Cr App 8.

R

RULES OF APPELLATE PROCEDURE, Ct Cr App 1.

RULES OF THE SUPREME COURT.

Applicability, Ct Cr App 1.

S

SCOPE OF RULES, Ct Cr App 1.

SESSIONS, Ct Cr App 4.

Matters continued to next session, Ct Cr App 9.

SETTINGS, Ct Cr App 6.

STAYS, Ct Cr App 15.

SUSPENSION OF RULES, Ct Cr App 2.

T

TERMS OF COURT, Ct Cr App 3.

TIME.

Convening of court, Ct Cr App 4.

Extensions of time, Ct Cr App 8.

DAVIDSON COUNTY

COURTS OF RECORD, TWENTIETH JUDICIAL DISTRICT

GENERAL SESSIONS COURT — CIVIL RULES

GENERAL SESSIONS COURT — CRIMINAL RULES

JUVENILE COURT

DAVIDSON COUNTY CIRCUIT, PROBATE AND GENERAL SESSIONS — CIVIL E-FILING RULES

DAVIDSON COUNTY CHANCERY COURT ELECTRONIC FILING RULES

LOCAL RULES OF PRACTICE COURTS OF RECORD, TWENTIETH JUDICIAL DISTRICT OF TENNESSEE

EFFECTIVE JUNE 1, 2005

CIRCUIT COURT, CHANCERY COURT, CRIMINAL COURT, AND
PROBATE COURT OF DAVIDSON COUNTY

RULE.

1. RULES OF COURT: APPLICABILITY, PURPOSE AND DEFINITIONS

- 1.01. Adoption of Rules
- 1.02. Applicability
- 1.03. Purpose of Rules
- 1.04. Definitions
- 1.05. Citation

2. THE PRESIDING JUDGE

3. ASSIGNMENT AND DISPOSITION OF CASES

- 3.01. Initial Assignment of All Cases
- 3.02. All Matters in the Same Division or Part
- 3.03. Interchange of Judges
- 3.04. Transfer of Cases
- 3.05. Motions to Transfer
- 3.06. Consolidation of Cases

4. COURT SESSIONS

5. CONDUCT OF COUNSEL AND OTHER COURT PARTICIPANTS

- 5.01. Counsel of Record; Entry of Appearance
- 5.02. Withdrawal of Counsel
- 5.03. Appearance Entered; Copies of Pleadings
- 5.04. Conduct of Counsel
- 5.05. Setting Attorney Fees
- 5.06. Contacting Judge
- 5.07. Smoking
- 5.08. Noise Generating Devices

6. FILING AND SERVICE OF PAPERS

- 6.01. Filing With the Clerk
- 6.02. Certificate of Service
- 6.03. Signature

RULE.

6.04. Pseudonym

6.05. Class Actions

6.06. Redaction

7. PAPERS FILED IN TRIAL COURT

7.01. Custody of the Files

7.02. Papers, Documents or Files Under Seal

7.03. Duties of Clerk: Habeas Corpus and Post Conviction

8. RECORDING OF COURT PROCEEDINGS

RULES APPLICABLE TO CRIMINAL CASES

9. EXTRAORDINARY INTERLOCUTORY RELIEF IN CRIMINAL CASES

9.01. Unindicted and Unassigned Cases

9.02. Ex Parte Communications

10. DISCOVERY IN CRIMINAL CASES

10.01. Discovery by the Defendant

10.02. Discovery by the State

10.03. Notice of Intent To Use Audio/Video Recording Is Required

11. SUBPOENAS

11.01. Subpoenas Issued by Clerk

11.02. Time for Issuing Subpoenas

11.03. Address of Witness

11.04. Prison Inmates

12. MOTIONS IN CRIMINAL CASES

12.01. Time for Filing Pre-Trial Motions

12.02. Failure to Appear at a Motion Hearing

12.03. Motions in Limine

12.04. Statement of Facts and Legal Authority

RULE.

13. SETTING CASES FOR TRIAL AND CONTINUANCES: CRIMINAL CASES
 - 13.01. Method of Setting
 - 13.02. Continuances
14. NEGOTIATIONS AND SETTLEMENTS IN CRIMINAL CASES
 - 14.01. Pre-Trial Order
 - 14.02. Settlement Date; Settlement Deadline
 - 14.03. Notice to Victims
15. ORDERS AND JUDGMENTS IN CRIMINAL CASES
 - 15.01. Preparation and Submission of Orders and Judgments
 - 15.02. Preparation and Submission of Orders and Judgments by Counsel
 - 15.03. Disagreements over Contents of Orders or Judgments
 - 15.04. Orders for Mental Health Evaluations
16. BONDING COMPANIES
 - 16.01. Qualifications and Operations
 - 16.02. Location of Supplemental Local Rules of Practice
17. COPIES FOR JURORS (RESERVED)

CIRCUIT AND CHANCERY CIVIL

18. TIME STANDARDS FOR DISPOSITION OF CASES
 - 18.01. Time Standards
 - 18.02. Dismissal of Cases
 - 18.03. Docket Calls or Status Conferences
19. EXTRAORDINARY RELIEF IN CIVIL CASES
 - 19.01. Assignment of Cases
 - 19.02. Restraining Orders
 - 19.03. Setting Hearing for Interlocutory Relief
 - 19.04. Hearings for Temporary Injunctions
 - 19.05. Hearings for Injunctive Relief in Domestic Relations Cases
20. GENERAL SESSIONS APPEALS IN CIRCUIT COURT
21. REFERENCES TO MASTER IN CIVIL CASES
 - 21.01. Order of Reference
 - 21.02. Statements of Claim and Responses
 - 21.03. Recording of the Proceedings
 - 21.04. Objections
22. DISCOVERY AND MOTIONS RELATED TO DISCOVERY
 - 22.01. Filing Required Only for Use by Court
 - 22.02. Extension of Time for Responses to Discovery
 - 22.03. Discovery Completion Deadline
 - 22.04. Interrogatories to Parties
 - 22.05. Requests for Admissions
 - 22.06. Disclosure of Audio/Visual Recording
 - 22.07. Objections to Discovery

RULE.

- 22.08. Efforts to Resolve Discovery Disputes
- 22.09. Motions to Compel Discovery
- 22.10. Motions for Protective Orders and to Quash Subpoenas
- 22.11. Motion to Compel; Agreement to Furnish Documents at Deposition
- 22.12. Reference of Discovery Disputes to a Master
- 22.13. Service
23. NEGOTIATIONS AND SETTLEMENTS IN CIVIL CASES
 - 23.01. Judicial Settlement Conference
 - 23.02. Awards of Expenses
 - 23.03. Court Approval of Settlements
 - 23.04. Presentment of Settlements
 - 23.05. Notice Immediately Upon Settlement
24. AGREED SUMMARY TRIAL
 - 24.01. Agreement
 - 24.02. Procedure
25. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS — SPECIAL PROCEDURES
 - 25.01. Briefs Required
 - 25.02. Filing and Service of Briefs
 - 25.03. Hearings — Oral Argument
 - 25.04. Waiver of Oral Argument
 - 25.05. Expedited Procedure Involving Prior Restraint
26. MOTIONS IN CIVIL CASES
 - 26.01. Time to Schedule and Hear Dispositive Motions
 - 26.02. Time for Hearings
 - 26.03. Fourteen Day Minimum Notice of Hearing on Motions; Summary Judgment Motions Filed Thirty-Seven Days Before Hearing
 - 26.04. Motions, Responses, Replies and Briefs
 - 26.05. Docketing Motions for Hearing and Disposition
 - 26.06. Personal Service Defined
 - 26.07. Special Setting of Motions
 - 26.08. Failure to Appear at a Motion Hearing; Late Appearance
 - 26.09. Striking or Postponement of Motions
 - 26.10. Agreed Orders
 - 26.11. The Hearing
 - 26.12. Motions in Limine
 - 26.13. Motions to Compel Discovery
 - 26.14. Class Action Determination
 - 26.15. Default Judgement Motion with Certificate
27. ADMINISTRATION AND SCHEDULING OF CIRCUIT AND CHANCERY CASES
 - 27.01. Administration of Cases
 - 27.02. Method of Setting Cases
 - 27.03. Certifying Cases Ready When Set
 - 27.04. Workers' Compensation Benefit Review Conference

RULE.	RULE.
27.05. Continuances in Chancery and Circuit Cases	37. SPECIAL PROCEDURES FOR DIVORCE OR DOMESTIC RELATIONS CASES
27.06. Administration and Assignment of Circuit Court Jury Cases	37.01. Uncontested Divorce Cases
27.07. Central Assignment of Circuit Court Non-Jury Cases for Trial	37.02. Contested Divorce Cases
28. SUBPOENAS	37.03. Designation of Parties
28.01. Subpoenas Issued by Clerk	37.04. Pendente Lite Hearings
28.02. Time for Issuing Subpoenas	37.05. Special Procedures for Divorce or Domestic Relations Cases
28.03. Address of Witness	38. SPECIAL PROCEDURES FOR ADOPTIONS
28.04. Prison Inmates	38.01. Filing
28.05. Subpoenas For Medical Records	38.02. Requirements for Setting Case
29. PRE-TRIAL PROCEDURE IN CIVIL CASES	38.03. Presentation of Testimony
29.01. Required Exchange of Witnesses and Documents	38.04. Attendance of Adoptive Child
29.02. Notice of Intent to Use Audio/Visual Recording or Animation is Required	38.05. Setting of Hearing
29.03. Briefs in Non-Jury Civil Cases	39. SPECIAL PROCEDURES FOR PROBATE MATTERS
30. MOTIONS IN LIMINE	39.01. Attorneys
31. JURY TRIALS IN CIVIL CASES	39.02. Definitions; Service of Process; Notice; Interested Parties
31.01. Procedure	39.03. Estates of Decedents
31.02. Number of Jurors	39.04. Trusts
31.03. Challenges	39.05. Conservatorships
31.04. Jury Instructions	39.06. Guardianships
31.05. Copies for Jurors	39.07. Sale of Real Estate
32. COURT REPORTERS IN CIVIL CASES	39.08. Name Change
33. ORDERS AND JUDGMENTS IN CIVIL CASES	39.09. Adversary Proceedings/Civil Actions
33.01. Preparation and Submission of Orders and Judgments	39.10. Guardian ad litem
33.02. Disagreements over Contents of Orders and Judgments	39.11. Setting Hearings
33.03. Court Costs	39.12. Petitions for Elective Share, Year's Support, Homestead, and Exempt Property
33.04. Payment and Satisfaction of Judgments	39.13. Motions
34. FUNDS PAID INTO COURT	39.14. Fees of Fiduciaries and Attorneys
35. [REPEALED]	39.15. Accountings and Closing of Estates:
36. [RESERVED]	39.16. Orders and Decrees
	39.17. Instructing Clerk to Invest Funds
	APPENDIX OF FORMS

RULE 1. RULES OF COURT: APPLICABILITY, PURPOSE AND DEFINITIONS

- § 1.01. Adoption of Rules**

These rules replace all previous local rules. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 1.02. Applicability

a. **General Applicability.** Unless otherwise indicated by a particular rule, Rules 1 through 8 apply to all types of cases in the Circuit, Chancery, Criminal and Probate courts in Davidson County. When a rule applies only to a particular type of case (e.g., civil cases or criminal cases), it applies to all cases of that type regardless of which court is hearing the case.

b. **Rules Applicable to Criminal Cases Only.** Rules 9 through 17 pertain only to criminal cases unless expressly stated otherwise in these rules.

c. **Rules Applicable to Civil Cases Only.** Rules 18 through 36 only pertain to civil cases unless expressly stated otherwise in these rules. Certain

civil proceedings, such as domestic, probate, conservatorship, guardianship and administrative appeals have special procedures which control those cases. (See Local Rules 37, 38 and 39). If and to the extent these rules are inconsistent with such special procedures, the special procedures shall control. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 1.03. Purpose of Rules

These rules will be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. The Judge or Chancellor will deviate from these local rules only in the exceptional cases where justice so requires. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 1.04. Definitions

The following definitions apply to terms used in these rules:

*Clerk: The Circuit Court Clerk, the Clerk & Master of the Chancery Court, and the Criminal Court Clerk, as applicable, or their designees.

*Calendar Clerk: The deputy clerk assigned to a particular division or part.

*Case Coordinator: The trial court staff member who coordinates judicial settlement conferences.

*Tenn. R. Civ. P.: Tennessee Rules of Civil Procedure.

*Tenn. R. Crim. P.: Tennessee Rules of Criminal Procedure. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 1.05. Citation

These rules may be cited as "Local Rule § ____." (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 2. THE PRESIDING JUDGE

The Presiding Judge, selected pursuant to T.C.A. § 16-2-509 and Rule 11 of the Rules of the Supreme Court of Tennessee, will supervise the administration of the trial courts. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 3. ASSIGNMENT AND DISPOSITION OF CASES

§ 3.01. Initial Assignment of All Cases

The Judges of the various courts will adopt a method for the initial assignment of cases to a particular division or part and enter an order to that effect. The clerk may not assign a case to a particular division or part other than by using the method ordered unless instructed to do so by the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 3.02. All Matters in the Same Division or Part

Once a case has been assigned, all matters in the case will be heard in that division or part, except as referred to in Local Rule 27 for Circuit Court jury and nonjury cases. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 3.03. Interchange of Judges

When necessary for the efficient administration of justice, a Judge may hear and determine any matter by interchange for another Judge without the necessity of transferring the case from one court to another or from one part or division to another. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 3.04. Transfer of Cases

The Presiding Judge may transfer a case from one court to another or from one division to another. The Judges and Chancellors of the 20th Judicial District may transfer cases among themselves by mutual consent except in cases of recusal. It is not necessary that the parties or their counsel consent to such a transfer. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 3.05. Motions to Transfer

A party requesting a transfer of a case will obtain a transfer order from the court to which the case is assigned. If a motion to transfer is prompted by a pending related case, absent exceptional circumstances, the transfer must be assigned to the court with the oldest pending related or companion case. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 3.06. Consolidation of Cases

Cases must be assigned or transferred to the same division or part before they can be consolidated. An Order to consolidate cases must be obtained from the division or part to which the cases to be consolidated are assigned. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 4. COURT SESSIONS

Regular sessions of court will open at 9:00 a.m. or at such other time as the court directs. Judges and attorneys will be prompt at all sessions. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 5. CONDUCT OF COUNSEL AND OTHER COURT PARTICIPANTS**§ 5.01. Counsel of Record; Entry of Appearance**

All counsel who have entered an appearance in a case will be counsel of record. Entry of an appearance will be made in one of the following ways:

1. a filed request by counsel to the clerk that an appearance be entered;
2. the filing of pleadings;
3. the filing of a formal notice of appearance;
4. appearance as counsel at an arraignment;
5. appointment by the Court. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 5.02. Withdrawal of Counsel

No attorney may be allowed to withdraw except for good cause and by leave of court upon motion after notice to all parties. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 5.03. Appearance Entered; Copies of Pleadings

If a party does not have counsel of record, copies of the pleadings filed will be furnished to the party. If a party does not have counsel of record, opposing counsel will call that fact to the attention of the court before any action is taken on any pleading filed which substantially affects the case. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 5.04. Conduct of Counsel**NBA PROFESSIONALISM COMMITTEE****LAWYER'S CREED OF PROFESSIONALISM**

Preamble A lawyer owes to the administration of justice personal dignity, integrity and independence and a duty to make the system of justice work fairly and efficiently. In order to carry out that responsibility, a lawyer must comply with the letter and spirit of the disciplinary standards applicable to all lawyers, as well as conducting himself or herself in accordance with the following Creed of Professionalism when dealing with a client, adverse parties, their counsel, the Courts and the general public.

WITH RESPECT TO MY CLIENT:

1. I will advise my client of my adherence to this Creed;
2. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my judgment or ability to provide my client with objective and independent advice;
3. I will endeavor to achieve my client's lawful objectives in all matters of representation as expeditiously and economically as possible;
4. In approaching cases, I will counsel my client with respect to mediation, arbitration, and other alternative methods of resolving disputes;
5. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay improperly resolution of a matter or to harass or to drain the financial resources of an adverse party;
6. I will advise my client that civility and courtesy are expected and are consistent with zealous representation;
7. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

WITH RESPECT TO ADVERSE PARTIES AND THEIR COUNSEL:

1. I will conduct myself with candor, in a spirit of cooperation and scrupulously observe all agreements and mutual understandings;
2. I will be courteous and civil, both in oral and written communications;
3. I will not knowingly make statements of fact or law that are untrue;
4. I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
5. I will endeavor to consult with adverse counsel before making scheduling decisions and before any required rescheduling, and I will cooperate with adverse counsel when scheduling changes are requested;

6. I will not use litigation or any other course of conduct to abuse or harass, such as seeking discovery which is clearly improper, abusive or excessive, or seeking sanctions or disqualification unless it is justified both by my client's lawful objective and by the interests of justice;

7. I will not use tactics which are intended to delay improperly resolution of a matter or to harass or to drain the financial resources of an adverse party;

8. In all matters of legal representation I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect, including making disparaging personal remarks toward adverse parties, counsel and witnesses **and making demeaning comments regarding race, religion, national origin or gender;**

9. I will not provide drafts of time sensitive documents or serve pleading, motions or briefs on another party or counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

10. In business transactions I will not unreasonably quarrel over irrelevant matters of form or style, but will concentrate on matters of substance and content;

11. I will attempt to prepare and revise documents which correctly reflect the agreement of the parties, and will not purposely include provisions which have not been agreed upon or purposely omit provisions which are necessary to reflect the agreement of the parties;

12. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review;

13. Where consistent with my client's interest, I will communicate with adverse counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

14. I will not take action adverse to the interests of a party known to be represented by counsel without notice to adversary counsel sufficient to permit a response;

15. I shall respond promptly to attempts by other lawyers to contact me whether by telephone or by correspondence.

WITH RESPECT TO THE COURTS AND OTHER TRIBUNALS:

1. I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the Court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

2. I will treat with respect the Court, members of the jury, witnesses, adverse parties and adverse counsel;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;

4. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

5. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleading and discovery requests;

6. When hearings or depositions have to be canceled, I will notify adverse counsel, and, if appropriate, the Court as early as possible;

7. Before setting dates for hearings or trials (or if that is not feasible, immediately thereafter) I will attempt to verify the availability of key

participants and witnesses so that I can promptly notify the Court and adverse counsel of any likely problem in that regard;

8. I will be punctual in attending Court hearings and depositions;

9. I will be candid with the Court at all times;

10. **I will refrain from commentary that reflects or references race, religion, national origin or gender in a demeaning fashion.**

WITH RESPECT TO THE PUBLIC AND TO OUR SYSTEM OF JUSTICE:

1. The law is a learned profession and I am committed to its goals of devotion to public service and improvement of the administration of justice;

2. I will keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to counsel knowledgeable in another field of practice;

3. I will be mindful that the law is a self-regulated profession and it is my duty to report unprivileged knowledge of any violation of D.R. 1-102;

4. I will be mindful of the need to protect the interests of the public and promote the image of the justice system in the eyes of the public when considering methods and contents of advertising;

5. I will contribute my talents, time, resources and civic influence on behalf of those persons who cannot afford adequate legal assistance and those organizations which serve the public good;

6. I will give of my talents and time to the organized bar to better the professional education of the bar, assist in efforts to improve the law, aid in efforts to assist colleagues and to promote public understanding of the justice system. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

Compiler's Notes. Tenn. Sup. Ct. R. 8, RPC 2.5(c), referred to in this section, does not exist. Tenn. Sup. Ct. R. 8, RPC 3.5(c), however, does concern communication with a juror after completion of the juror's term of service.

D.R. 1-102, referred to in this section, is a reference to the former Disciplinary Rules, which have been replaced by the Rules of Professional Conduct, in Tenn. Sup. Ct. R. 8, RPC.

NOTES TO DECISIONS

1. Suspension.

Order suspending an attorney from the practice of law in the Circuit Courts of Davidson County did not enact an unconstitutional prior restraint on an attorney's speech because the order simply prohibited the attorney from making any communication to counsel in the case

that threatened, insulted, disparaged, demeaned, or embarrassed them and/or their family members. *Shao ex rel. Shao v. HCA Health Servs. of Tenn.*, — S.W.3d —, 2019 Tenn. App. LEXIS 457 (Tenn. Ct. App. Sept. 16, 2019).

§ 5.05. Setting Attorney Fees

Whenever it is necessary for the court to determine fees of attorneys, the attorney will file an affidavit setting forth an itemized statement of the services rendered, the time, a suggestion of the fee to be awarded along with a statement of other pertinent facts including but not limited to that required by Tenn. Sup. Ct. R. 8, RPC 1.5, applicable case law, and such other information as may be requested by the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 5.06. Contacting Judge

Neither counsel nor a party to a pending action will communicate ex parte with the Judge before whom the matter is pending except consistent with the Rules of Professional Conduct and the Code of Judicial Ethics. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 5.07. Smoking

There will be no smoking in court or during the taking of any deposition. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 5.08. Noise Generating Devices

All cell phones or other noise generating devices shall be turned off in court or during the taking of a deposition. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 6. FILING AND SERVICE OF PAPERS**§ 6.01. Filing With the Clerk**

All papers, including pleadings, motions, briefs, and proposed judgments and orders, will be filed with or submitted to the clerk.

In accordance with T.R.C.P Rule 5B for Circuit, Chancery and Probate and T.R.CR.P. Rule 49.2 for Criminal, electronic filing ("e-filing") is adopted for the Courts of Davidson County Tennessee for the Twentieth Judicial District. In accordance with Tennessee Supreme Court Rule 46A, electronic service of e-filed papers shall apply for the State Trial Courts of Davidson County, Tennessee. The Electronic Filing Rules set forth and published by each Clerk's Office will govern the effective date and rules for the electronic filing of cases, pleadings and other papers.

The following documents may not be e-filed and are required to be conventionally filed in paper format:

- (1) In camera filings.
- (2) Last Will and Testaments.
- (3) Probate Interim, Annual and Final Settlement Accountings.
- (4) Summons and Subpoenas in Chancery Court.

Papers should not be mailed to or left with the Judge except in the following circumstances:

- (1) when specifically authorized by the Judge, or
- (2) to provide a courtesy copy for the Judge's review. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 6.02. Certificate of Service

All papers must contain a certificate of service showing the date of service, manner of service and the name of the person or persons served. The clerk may refuse to file papers without a certificate. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 6.03. Signature

All pleadings, orders, briefs and other papers submitted for consideration by the court will be signed by at least one attorney of record in her/his individual name or pro se party and will show the style and number of the case, the

general nature of the paper filed, and the name, street address and telephone number of the attorney or pro se party filing the pleadings, and the filing attorney's Tennessee Supreme Court Registration Number. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 6.04. Pseudonym

No case may be filed under a pseudonym absent court order. The motion to proceed by pseudonym must be accompanied by an affidavit stating specific facts explaining why anonymity of the party is necessary and facts sufficient to overcome the presumption of public access to the identities of litigants. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 6.05. Class Actions

In any case sought to be maintained as a class action the complaint shall bear next to its caption the legend "Complaint — Class Action." [Comment: See Rule 26.14 for further requirements]. The clerk shall bring the lawsuit to the attention of the Judge or Chancellor assigned to the case. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 6.06. Redaction

When confidential information is not required by law to be filed, the filer should redact or leave out all/portion(s) of the information as directed below prior to filing the document(s). Items designated by the Tennessee Code Annotated as Confidential Information not open for public inspection are as follows:

Include last 4 digits only:

- Social security numbers
- Taxpayer IDs
- Employer and Taxpayer Account Numbers/PINs/Info
- Credit/Debit Card Account Numbers/PIN/ Authorization Numbers

Redact all digits/data:

- Passport/Alien Registration Numbers
- Biometric Data
- Electronic Identification Numbers/ Routing Codes
- Driver License Numbers
- VINs

Include initials only:

- Minor's name

Include year only:

- Individual's birthday (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 7. PAPERS FILED IN TRIAL COURT

§ 7.01. Custody of the Files

The clerk will have custody of all papers, records and electronic records of the court. Files may not be withdrawn by any person at any time absent court order. Depositions and records of administrative tribunals filed in paper

format may be withdrawn with permission of the clerk. The clerk will furnish copies of the content of files at a reasonable cost. After final determination in a civil case, the parties have thirty days to withdraw trial exhibits and discovery materials submitted in paper format. The clerk may destroy or dispose of trial exhibits not so withdrawn after appropriate notice to the parties. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 7.02. Papers, Documents or Files Under Seal

All papers, documents, electronic documents and files shall be available for public inspection except as specifically exempted by court order or statute. The motion seeking such an order must contain sufficient facts to overcome the presumption in *favor* of disclosure. [Comment: The standards relating to the appropriateness of sealing documents and/or court files is set forth in *Ballard v. Herzke*, 924 S.W.2d 652, 1996 Tenn. LEXIS 378 (Tenn. 1996)]. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 7.03. Duties of Clerk: Habeas Corpus and Post Conviction

The Clerks of Court and Clerk and Master shall immediately notify the Judge or Chancellor to whom the case is assigned of the filing of any petition for habeas corpus or post-conviction relief and subsequent filings so as to insure compliance with T.C.A. § 29-21-108(a) and/or T.C.A. §§ 40-30-105 and 106. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 8. RECORDING OF COURT PROCEEDINGS

a. **Audio-visual Recordings of Court Proceedings.** The Sixth Circuit Court has been authorized by the Supreme Court to use audio-visual recordings as the official record of court proceedings pursuant to Supreme Court Rule 26. Unless otherwise ordered by the affected court, no other court will record or utilize such audio-visual recordings as the official record on appeal, nor shall any court be required to maintain an exhibit list and trial log with respect to an audio-visual recording. The Clerks of Court and Clerk & Master shall not file or certify such recordings, except from the Sixth Circuit Court, as part of the record on appeal unless directed to do so by the court from which the appeal is taken.

b. **Access to Courtroom Video Servers.** No one except Judges, Chancellors, and full time court staff shall have access by password or otherwise to the video servers in any of the trial courts absent written authorization from the affected Judge or Chancellor. [Added by order filed November 5, 2007, effective November 5, 2007.]

NOTES TO DECISIONS

1. Official Recording.

Because the official audio-visual recording of the hearing constituted the transcript, plaintiffs' notice that no transcript would be filed

was in error. *Ellithorpe v. Weismark*, 479 S.W.3d 818, 2015 Tenn. LEXIS 827 (Tenn. Oct. 8, 2015).

RULES APPLICABLE TO CRIMINAL CASES**RULE 9. EXTRAORDINARY INTERLOCUTORY RELIEF IN CRIMINAL CASES****§ 9.01. Unindicted and Unassigned Cases**

All special requests for extraordinary interlocutory relief in unindicted and unassigned cases awaiting grand jury action shall be presented to the Judge where the case will eventually be assigned, according to the policy and procedure of the office of the Criminal Court Clerk. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 9.02. Ex Parte Communications

Pursuant to Tennessee Supreme Court Rule 10, Canon 3(B)(7)(e), as amended by order dated December 7, 2009, Judges of therapeutic courts, mental health courts and drug courts may engage in ex parte communications concerning the welfare and treatment of any individuals in those courts. However, should the Judge of any of the courts enumerated above believe that such ex parte communication shall, in any way, influence any ruling by that Judge, the Judge shall immediately enter an order of recusal. Further, if any defendant should feel that their right to due process has been affected by said communications, they may petition the Judge for recusal. Upon good cause shown by the defendant, the Judge shall enter an order of recusal. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective January 21, 2011; amended effective July 1, 2019.)

RULE 10. DISCOVERY IN CRIMINAL CASES**§ 10.01. Discovery by the Defendant**

All relevant issues relating to discovery by the defendant shall be addressed in the pre-trial scheduling order provided to the parties at the time of arraignment. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 10.02. Discovery by the State

All relevant issues relating to discovery by the State shall be addressed in the pre-trial scheduling order provided to the parties at the time of arraignment. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 10.03. Notice of Intent To Use Audio/Video Recording Is Required

When a party intends to offer an audio and/or visual recording as evidence in a jury trial, counsel must provide written notice to all adverse counsel at least ten (10) days before a trial. Adverse counsel shall be permitted to review the recording in the form to be offered at trial and shall be allowed to copy the recording at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion

in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing. This does not void requirements of Tenn. R. Crim. P. 12(d). (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 11. SUBPOENAS

§ 11.01. Subpoenas Issued by Clerk

In criminal cases the issuance of subpoenas for witnesses shall comply with Criminal Court Clerk policies. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 11.02. Time for Issuing Subpoenas

Subpoenas for a local witness must be issued and dated by the clerk no later than five (5) days before the date of trial unless prior approval has been granted by the Judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the clerk no later than seven (7) days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county Sheriff or other authorized person to effect service of the subpoena. The foregoing notwithstanding, the clerk shall not refuse to issue a subpoena even if requested after the dates set forth above. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 11.03. Address of Witness

Counsel of record shall be responsible for providing street address and phone numbers, if known, on the requested subpoena(s). (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 11.04. Prison Inmates

The following rules apply to the appearance of prison inmates in court:

- a. When the prison inmate is a defendant in a criminal case, the Criminal Court Clerk shall request the presence of the inmate from the Department of Correction at least six (6) working days prior to the court date.
- b. Counsel needing prison inmates as witnesses in a criminal case must obtain a court order for the witnesses' appearance and this must be obtained at least ten (10) working days prior to the trial or hearing date.
- c. Defense counsel in criminal cases shall make every effort to insure that prison inmates are not needlessly brought to court for a scheduled settlement docket (see Local Rule 14.02) unless the case is for actual settlement and/or there is a need to personally talk to the inmate. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 12. MOTIONS IN CRIMINAL CASES

§ 12.01. Time for Filing Pre-Trial Motions

All pre-trial motions shall be made pursuant to Tenn. R. Crim. P. as well as the pre-trial scheduling order. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 12.02. Failure to Appear at a Motion Hearing

If counsel for a movant does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike, deny, or otherwise dispose of the motion. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 12.03. Motions in Limine

a. Motions in limine relating to an audio and/or visual recording shall be governed by Local Rule 10.03.

b. Motions in limine seeking to resolve a trial evidentiary matter shall be set at the discretion of the court.

c. Counsel are encouraged to raise appropriate evidentiary objections by filing a motion at least five (5) days before trial. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 12.04. Statement of Facts and Legal Authority

Every motion and response which may require the resolution of an issue of law or evidence shall be accompanied by a brief statement of facts and legal authority in support of the position of the motion or response. (Added by order filed November 5, 2007, effective November 5, 2007.)

**RULE 13. SETTING CASES FOR TRIAL AND CONTINUANCES:
CRIMINAL CASES****§ 13.01. Method of Setting**

Cases shall be set for trial by the court on the final settlement date. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 13.02. Continuances

a. Cases may not be continued by agreement and may be continued only by leave of court. When a case has been set for trial it will not be continued except for good cause, which shall be brought to the attention of the court as soon as practicable before the date of the trial.

b. Absence of a witness will not be a ground for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and Rule 17, Tenn. R. Crim. P.

c. If a case is continued, a new trial date will be assigned at the time of the continuance. (Added by order filed November 5, 2007, effective November 5, 2007.)

**RULE 14. NEGOTIATIONS AND SETTLEMENTS IN CRIMINAL
CASES****§ 14.01. Pre-Trial Order**

At arraignment the court shall notify the parties of the deadline of filing pre-trial motions, the date(s) for the hearing on pre-trial motions and the settlement date(s). The above date(s) will be provided to the parties in the form of a pre-trial order, copies of which shall be furnished to the parties. The clerk will retain the original order in its file but need not copy it on the minutes. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 14.02. Settlement Date; Settlement Deadline

At arraignment the court will assign a court date for settlement of the case, which will be the deadline for acceptance of a negotiated disposition. At the final settlement date, if the case has not been disposed of the court will set the case for trial. Once a case has been set for trial, the court will not accept any settlement except for good cause which shall be brought to the attention of the court as soon as practicable before the date(s) of the trial. On the day of the trial, the case may be resolved only by trial, the State's motion for dismissal with prejudice, or the defendant's plea of guilty to the offense(s) charged in the indictment. Nothing in this rule shall prohibit the defendant's election to enter a plea of guilty to one or more counts of an indictment while demanding a trial on one or more counts of the same indictment. Likewise, counsel for the State may move to dismiss with prejudice one or more counts of the indictment while demanding trial on one or more counts. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 14.03. Notice to Victims

In recognition of T.C.A. § 40-38-101, in cases involving plea agreements pursuant to Tenn. R. Crim. P. 11, the court may refuse to accept the plea unless the prosecuting attorney states on the record that he or she has, before the plea, communicated with the victim regarding the plea or made a good faith effort to communicate with the victim. This rule shall apply to pleas in cases where the defendant is indicted for the following offenses:

- a. murder or the attempt, facilitation or solicitation to commit murder;
- b. voluntary manslaughter, reckless homicide, criminally negligent homicide or the attempt, facilitation or solicitation to commit these crimes;
- c. vehicular homicide;
- d. aggravated assault;
- e. aggravated kidnapping, kidnapping or the attempt, facilitation or solicitation to commit these crimes;
- f. all felonies described as Sexual Offenses under T.C.A. § 39-13-501 et seq. or the attempt, facilitation or solicitation to commit these crimes;
- g. aggravated arson and arson or the attempt, facilitation or solicitation to commit these crimes;
- h. robbery, aggravated robbery and theft of property from the person;
- i. especially aggravated burglary or aggravated burglary or the attempt, facilitation or solicitation to commit these crimes;
- j. all felonies described as Offenses Against the Family under T.C.A. § 39-15-101 et seq., or the attempt, facilitation or solicitation to commit these crimes;
- k. vandalism;
- l. stalking; and
- m. all other crimes involving individual victims where the Judge deems it appropriate that prior communication is made to the victim. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 15. ORDERS AND JUDGMENTS IN CRIMINAL CASES**§ 15.01. Preparation and Submission of Orders and Judgments**

Unless the court directs counsel to prepare an order for entry by the court, all orders and judgments will be prepared by the clerk or by the court when deemed appropriate. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 15.02. Preparation and Submission of Orders and Judgments by Counsel

When directed by the court, counsel will prepare orders for entry by the court. All orders must be filed with the clerk and served on opposing counsel within seven (7) days following the day on which the ruling is made by the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 15.03. Disagreements over Contents of Orders or Judgments

Unless otherwise directed by the court, an order containing only the signature of the attorney who prepared the order will not be entered immediately, but will be held by the clerk for three days. After opposing counsel receives a copy of the proposed order, he or she shall immediately notify the minute clerk and the court if there is any objection to the order. In that event, a conference shall be scheduled at a time convenient to the parties and the Judge. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 15.04. Orders for Mental Health Evaluations

In all mental health evaluations under the provisions of T.C.A. § 33-7-301, the order shall be accompanied by a separate form to be provided by the clerk. This form, to be filled out by counsel, shall at least include the reason for the request, observed behavior, nature of changes, social history (including a history of prior treatment), a prior criminal record, copy of arrest warrant or indictment and, if available, the arrest report. The clerk shall provide the completed form to the individual or agency doing the evaluation. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 16. BONDING COMPANIES**§ 16.01. Qualifications and Operations**

All matters involving the qualifications and operation of bond persons and bonding companies shall be addressed to the Judges of the Criminal Court, who shall hear and dispose of such petitions and applications as they shall determine. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 16.02. Location of Supplemental Local Rules of Practice

The local rules of practice related to bail bond companies and bond persons as adopted by the Criminal Court Judges shall be filed with the Criminal Court Clerk and be available for inspection and/or copying by all interested persons and are available on the internet at www.nashville.gov/trcourts/bond_rules.html. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 17. COPIES FOR JURORS (RESERVED)

CIRCUIT AND CHANCERY CIVIL

RULE 18. TIME STANDARDS FOR DISPOSITION OF CASES

§ 18.01. Time Standards

All civil cases must be concluded or an order setting the case for trial obtained within twelve (12) months from date of filing unless the court has directed a shorter or longer period. (Added by order filed November 5, 2007, effective November 5, 2007.)

NOTES TO DECISIONS

1. Failure to Prosecute.

Mother of a student who fell to his death from a dormitory window filed suit in state court and federal court against the university her son was attending; after the state proceedings lay dormant for over one year, the circuit court dismissed the complaint without a hearing for

failure to prosecute, and the dismissal order was not an adjudication on the merits. *DeLong v. Vanderbilt Univ.*, 186 S.W.3d 506, 2005 Tenn. App. LEXIS 497 (Tenn. Ct. App. 2005), appeal denied, *DeLong v. Vanderbilt Univ.*, — S.W.3d —, 2005 Tenn. LEXIS 1189 (Tenn. Dec. 19, 2005).

§ 18.02. Dismissal of Cases

To expedite cases, the court may take reasonable measures including dismissal or entering a scheduling order to enforce the time standard set forth above. (Added by order filed November 5, 2007, effective November 5, 2007.)

NOTES TO DECISIONS

1. Failure to Prosecute.

Mother of a student who fell to his death from a dormitory window filed suit in state court and federal court against the university her son was attending; after the state proceedings lay dormant for over one year, the circuit court dismissed the complaint without a hearing for

failure to prosecute, and the dismissal order was not an adjudication on the merits. *DeLong v. Vanderbilt Univ.*, 186 S.W.3d 506, 2005 Tenn. App. LEXIS 497 (Tenn. Ct. App. 2005), appeal denied, *DeLong v. Vanderbilt Univ.*, — S.W.3d —, 2005 Tenn. LEXIS 1189 (Tenn. Dec. 19, 2005).

§ 18.03. Docket Calls or Status Conferences

The court may hold docket calls or status conferences to ascertain the status of cases and set deadlines for their disposition. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 19. EXTRAORDINARY RELIEF IN CIVIL CASES

§ 19.01. Assignment of Cases

Pleadings seeking a writ of certiorari, restraining order or other extraordinary relief shall be first filed with the clerk and assigned to a court. The pleadings & exhibits shall then be presented to the Judge or Chancellor of the assigned court or to another Judge or Chancellor if the assigned Judge or Chancellor is unavailable. (Added by order filed November 5, 2007, effective November 5, 2007.)

Davidson County

§ 19.02. Restraining Orders

a. No court will grant a restraining order unless notice is given to the opposing party or good cause is shown for dispensing of notice and supported by affidavit.

b. Parties seeking a restraining order will submit a proposed restraining order along with the request for relief to the court. The restraining order shall provide for the setting of a hearing for a temporary injunction and shall provide a space for the court to set a date, time and location for such a hearing.

c. Application for temporary restraining order will be submitted on the filed pleadings and supporting documents.

d. In domestic relations cases the provisions of this rule shall be followed only insofar as deemed appropriate by the Judge to whom application is made. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 19.03. Setting Hearing for Interlocutory Relief

Hearings on applications for temporary injunctions and other forms of extraordinary interlocutory relief shall be set as provided in Local Rule 19.02 (b), or in cases where no restraining order is issued, (1) upon motion or (2) by an order setting the date, time and location for the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 19.04. Hearings for Temporary Injunctions

The court shall conduct all hearings for temporary injunctions and other forms of extraordinary interlocutory relief upon affidavits or depositions unless a party requests and obtains permission of the court for the introduction of oral testimony before the time of the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 19.05. Hearings for Injunctive Relief in Domestic Relations Cases

All hearings for temporary injunctions or other forms of interlocutory relief in domestic relations cases shall be governed by Local Rule 37.04. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 20. GENERAL SESSIONS APPEALS IN CIRCUIT COURT

a. It shall be the duty of the parties and/or their attorneys to determine when a case appealed from the General Sessions Court is filed with the Circuit Court Clerk.

b. Once the warrant being appealed is received by and filed with the Circuit Court Clerk, the appellant has the duty to set the appeal for a hearing before a trial judge. The appellant has forty five (45) days to secure a trial date from the court. This time is counted from the date the Circuit Court Clerk files the appealed warrant. If the appellant fails to secure this order within the 45 day time period, an order will be entered making the judgment of the General Sessions Court the judgment of the Circuit Court with costs taxed to the appellant. At the time the appeal is perfected in the Clerk's office, the clerk shall give the appellant or the appellant's attorney written notice of this rule.

c. The signature of an attorney or party to an appeal from General Sessions Court shall constitute a certificate under Tenn. R. Civ. P. 11.

d. All final judgments from an appeal of a Traffic Case shall be remanded to the General Sessions Traffic court for proper electronic reporting to the

Department of Safety. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 21. REFERENCES TO MASTER IN CIVIL CASES

§ 21.01. Order of Reference

All references to a Master shall be by order and shall be specific about what is referred and what is reserved for further proceedings before the court. Partition references must address ownership, encumbrances, type of partition, method of sale, and value. Parties should seek specific language through motion where contested, or by agreement after consultation with the proposed master about practices in the particular court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 21.02. Statements of Claim and Responses

The parties shall file itemized statements of claim and responses to statements of claim as directed by the master. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 21.03. Recording of the Proceedings

The parties are responsible for providing a court reporter in order to preserve rights to object before the trial Judge. (As amended by order filed November 5, 2007, effective November 5, 2007.)

§ 21.04. Objections

Any objection to the master's report which is based upon a factual question must be supported by a transcript of the hearing before the master. Objections shall be heard on the motion docket. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 22. DISCOVERY AND MOTIONS RELATED TO DISCOVERY

§ 22.01. Filing Required Only for Use by Court

Interrogatories, requests for production or any other discovery material will not be filed with the clerk unless and until such material is to be considered by the court for any purpose. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.02. Extension of Time for Responses to Discovery

As provided in Tenn. R. Civ. P. 29, stipulations extending the time for responding to interrogatories, requests for production and requests for admissions may be made without approval of the court provided such stipulated extension is not in conflict with an order of the Court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.03. Discovery Completion Deadline

Upon motion of a party or upon its own motion, the court may order that discovery be completed by a certain date. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.04. Interrogatories to Parties

a. No party will serve more than thirty (30) single question interrogatories, including sub-parts, on another party without leave of court. Any motion

seeking permission to serve more than thirty (30) interrogatories will set out the additional interrogatories the party wishes to serve. The motion will be accompanied by a memorandum giving reasons establishing good cause for the service of additional interrogatories. If a party is served with more than thirty (30) interrogatories without an order of the court, he or she will respond only to the first thirty (30) in the manner provided by the Tenn. R. Civ. P.

b. After each separate question and sub-question, a blank space will be provided reasonably calculated to enable the answering party to have his or her answer typed in. The answering party will verify the answers immediately following the answer to the last interrogatory.

c. The party to whom the interrogatories are directed will answer or object to each interrogatory within the space so provided or use additional pages if necessary, will serve the copy containing the original verification upon the party propounding the interrogatories, and will serve copies thereof on opposing counsel. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.05. Requests for Admissions

a. Requests for admissions made pursuant to Tenn. R. Civ. P. 36 will be arranged so that after each separate request, a blank space will be provided reasonably calculated to enable the responding party to have the response typed in.

b. b. If a response is necessary, the party to whom the requests are directed will respond in the space provided, serve a copy containing the original or electronic signature upon the requesting party, and serve the copies thereof on opposing counsel. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 22.06. Disclosure of Audio/Visual Recording

This is addressed by Local Rule 29.02. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.07. Objections to Discovery

When objecting to interrogatories, requests for admissions, requests for production, the interrogatory or request will be repeated immediately preceding the objection. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.08. Efforts to Resolve Discovery Disputes

The court will refuse to rule on any motion related to discovery unless moving counsel files with the motion, a statement which certifies that the lawyer has conferred with opposing counsel in a good faith effort to resolve the discovery dispute and that the effort has not been successful. If the certification asserts that opposing counsel has refused or delayed discussion of the discovery issues raised in the motion, the court will take appropriate action when resolving the motion so as to prevent further delay. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.09. Motions to Compel Discovery

Motions to compel discovery shall:

a. either (1) quote verbatim the interrogatory, request, or question, and any objection or response thereto, or (2) be accompanied by a copy of the interroga-

tory, request, or excerpts of a deposition which shows the question and objection or response;

b. state the reason supporting the motion;

c. where a party has submitted no response to the discovery or has objected to the entire set of interrogatories or requests, neither of the requirements in Local Rule 22.09(a) shall apply;

d. be accompanied by a discovery effort certification (See Rule 22.08). (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.10. Motions for Protective Orders and to Quash Subpoenas

Motions for protective orders which are filed pursuant to Tenn. R. Civ. P. 26.03, motions to quash subpoenas for discovery which are filed pursuant to Tenn. R. Civ. P. 45.02, or any motion asking that discovery be postponed or restricted shall:

a. either (1) quote verbatim the interrogatory, request, question, or subpoena, or (2) be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition which shows the question;

b. state with particularity the grounds for the motion;

c. be accompanied by an affidavit or other evidence showing the need for the order. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.11. Motion to Compel; Agreement to Furnish Documents at Deposition

Agreements to furnish exhibits made during the taking of depositions may be enforced by motion made pursuant to Tenn. R. Civil. P. 37 and/or Rule 22.09 of these rules. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.12. Reference of Discovery Disputes to a Master

The court may refer to discovery disputes to a master. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 22.13. Service

Whenever a request for discovery is made, the party seeking discovery [shall] serve each party with a copy of the request. Such service shall be made regardless of whether the discovery sought is directed to only one of multiple parties. Likewise, each response to a request for discovery shall be served on each party in the case. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 23. NEGOTIATIONS AND SETTLEMENTS IN CIVIL CASES

§ 23.01. Judicial Settlement Conference

(a) **Settlement Judge or Chancellor.** Settlement conferences will be conducted by a Judge or Chancellor other than the Judge or Chancellor to whom the case is assigned for trial, except when requested and agreed upon by the parties or when the Judge or Chancellor to whom the case is assigned deems it appropriate to preside over the settlement conference because of the exigencies of the case.

(b) **Scheduling Settlement Conferences.** A Judge or Chancellor who is assigned to the case may schedule a settlement conference as part of the case

management order or as a result of discussions during a case management conference, with or without the consent of any or all parties. A party may file a motion requesting a settlement conference if a settlement conference is not otherwise provided in the case management order or attorneys agreeing to a conference may contact the case coordinator to schedule a judicial settlement conference.

(c) **Party Attendance.** The assigned Judge or Chancellor shall require that the parties or their representatives with full settlement authority attend the settlement conference except upon good cause shown.

(d) **Settlement Statements.**

(1) At least five (5) days before the settlement conference, each party shall deliver under seal, directly to the courtroom deputy or calendar clerk for the settlement Judge or Chancellor, an ex parte settlement conference statement, which shall specify the party's settlement position.

(2) The settlement statement shall be furnished only to the Court and not to any other party.

(3) The settlement statement shall not be filed with the Clerk of Court.

(4) The settlement statement shall include a summary of the party's view of the law as to theory of liability or defense, factors compelling or blocking settlement, status of discovery, and identification of any essential or concerned third parties. In addition, each party shall state whether any settlement offer has been made and the terms thereof shall also contain a candid assessment of the strengths and weaknesses of both sides of the case, an appraisal of the issue of liability, the status of the parties' settlement discussions, if any, and an assessment of the economic cost of proceeding to trial.

(5) Plaintiff's settlement statement shall contain an assessment from plaintiff's viewpoint of damages and the strengths and weaknesses of plaintiff's position.

(6) Defendant's settlement statement shall contain an assessment of the plaintiff's damages, defendant's exposure to those damages and the respective strengths and weaknesses of defendant's position.

(7) The settlement statement shall contain a statement of the settlement authority extended by the client, based on the attorney's written evaluation and opinion, which all shall be furnished to the client in sufficient time to obtain express settlement instructions.

(e) **Confidentiality.** No part of any of the contents of the discussions or any statements made or information provided to the Court and/or to any party or counsel during a settlement conference shall be used by any party or repeated to or otherwise provided to any other person by any party for use in the litigation or any other litigation for any purpose whatsoever or for any other purpose not in connection with the case or any other litigation. This protection includes, but is not limited to, the protection provided by T.R.E. 408 and 409. Likewise, all disclosures made to the Settlement Judge or Chancellor shall be kept in strict confidence. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 23.02. Awards of Expenses

If any case is settled within forty-eight hours of when it is to begin, the court may award compensation to witnesses for lost income and/or travel expenses and tax the same as costs. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 23.03. Court Approval of Settlements

In the event a minor or incompetent person is not represented by counsel, the court may require that a guardian ad litem be appointed for the person if the court is not satisfied with the proposed settlement, and in that event, the fee of said guardian ad litem will be taxed as part of the costs. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 23.04. Presentment of Settlements

Proposed workers' compensation, legitimation and minor settlements may be presented for approval before the opening of court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 23.05. Notice Immediately Upon Settlement

If a case is set for trial and the parties later reach a settlement, the parties shall give immediate notice of the settlement to the Calendar Clerk in Chancery and Assignment Clerk in Circuit, and shall promptly file an agreed order. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 24. AGREED SUMMARY TRIAL

§ 24.01. Agreement

In suits filed in Chancery Court, Circuit Court, or Probate Court, the court may order a special expedited proceeding if the following conditions are met:

a. An agreed order is submitted which provides for an expedited proceeding pursuant to this rule. The agreed order shall serve as a certification that a filed agreement has been entered into and signed by the parties and their counsel acknowledging that they understand that the case is being handled under this expedited format. [See appendix for sample agreement and order].

b. The signed filed agreement must state that the parties have agreed to an upper and a lower limit to the monetary award that the plaintiff will receive as damages if liability is stipulated or eventually determined by the Court. These amounts, however, shall not be disclosed to the Court except as provided at 24.02(h).

c. The signed filed agreement evidences the parties' intention that the decision will be final (unless the right to appeal is specifically reserved).

d. The signed filed agreement shall provide how court costs shall be allocated. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 24.02. Procedure

In the interest of saving the time and expense of a complete court proceeding, the special expedited proceeding shall be conducted as follows:

a. The proceeding will be held before the Judge who has agreed to hear the case (or by special Judge appointed by the regular Judge and approved by counsel) without a jury. Expedited proceedings shall be set for hearing by

agreement of counsel after consultation with the Calendar Clerk for Chancery and Probate Court or the Assignment Clerk for Circuit Court.

b. The parties will voluntarily furnish whatever items are requested that would be subject to discovery under the law to each other.

c. The parties will appear with their attorneys at the date and time set by order of the Court.

d. The plaintiff's attorney will present his or her proof on the issues to be tried, including liability, and argue his or her rights to recovery, including amount of damages.

e. The defendant's attorney will present his or her proof and arguments in defense and then the plaintiff's attorney will be allowed rebuttal.

f. Proof as used in (d) and (e) above may include stipulations, exhibits, live testimony or whatever variations the parties may agree upon.

g. The Judge shall deliberate and render an initial decision, which shall also include the amount of damages, if applicable.

h. If the initial decision includes an award of damages, the parties shall disclose to the Court the agreed upon limits of recovery as provided in 24.01(b).

i. The initial decision shall become the final decision if the amount of damages awarded in 24.02(g) is between the upper and lower limits previously agreed upon.

j. If the initial decision rendered in 24.02(h) exceeds the previously agreed upon upper limit, then the initial decision shall be modified so that the final decision includes damages equal to the agreed upon upper limit.

k. If the initial decision rendered in 24.02(g) is less than the previously agreed upon lower limit, then the initial decision shall be modified so that the final decision includes damages equal to the agreed upon lower limit.

l. An enforceable judgment will be entered based upon the final decision.

m. The final order in the case shall reference and attach the Rule 24 Agreement as signed by the parties and their counsel. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 25. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS — SPECIAL PROCEDURES

§ 25.01. Briefs Required

Briefs must be filed in all cases heard by the court upon the record from an administrative tribunal or agency. If a petitioner-appellant fails to file his or her brief within the time provided by this rule or within the time ordered by the court, the action may be dismissed and the agency decision affirmed. If the defendant-appellee has not filed his or her brief within the time provided by this rule or within the time ordered by the court, the court may decide the case solely upon the record and the petitioner-appellant's brief. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 25.02. Filing and Service of Briefs

The petitioner-appellant must file and serve a brief within thirty (30) days after the record is filed. The defendant-appellee must file and serve a brief within thirty (30) days after service of the brief of the petitioner-appellant. Reply briefs may be filed at the option of a party, and, if filed, must be filed and

served within fourteen (14) days after service of the preceding brief. Upon motion of a party or upon its own motion, the court may enlarge or shorten the time for filing briefs. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 25.03. Hearings — Oral Argument

Hearings on oral argument shall be scheduled as provided in Local Rule 27 after the record has been filed. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 25.04. Waiver of Oral Argument

Oral arguments may be waived by agreement of counsel. If oral argument is waived, counsel shall notify in writing the Calendar Clerk or Assignment Clerk after all briefs are filed. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 25.05. Expedited Procedure Involving Prior Restraint

If a petitioner-appellant alleges that the decision of an administrative tribunal or agency unlawfully results in the prior restraint of his or her rights that are guaranteed by the First Amendment to the U.S. Constitution and or Article One, Section 19 of the Constitution of Tennessee, and either party requests an expedited hearing, the court will establish an expedited briefing schedule and expedited hearing date to review the merits of the appeal. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 26. MOTIONS IN CIVIL CASES

§ 26.01. Time to Schedule and Hear Dispositive Motions

Dispositive motions must be scheduled to be heard at least thirty (30) days before a trial date unless the court otherwise orders. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.02. Time for Hearings

- a. Motions will be heard at 9:00 a.m. on Fridays with the exception of Sixth Circuit, which hears motions at 9:30 a.m., and the Fourth Circuit, which hears motions at 9:00 a.m.
- b. Appropriate notice shall be published when a court will not have a motion docket on a Friday.
- c. Judges will endeavor to arrange their motion dockets to minimize delay for lawyers. If a lawyer is aware that an argument will be prolonged, the lawyer should attempt to set the motion specially. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.03. Fourteen Day Minimum Notice of Hearing on Motions; Summary Judgment Motions Filed Thirty-Seven Days Before Hearing

- a. The notice of hearing as contained in Local Rule 26.05(b) shall be filed at least fourteen (14) days before the scheduled hearing date.
- b. A motion for summary judgment cannot be heard until at least thirty-seven (37) days after it is filed unless the parties otherwise agree.
- c. In Circuit Court, the moving party needs file no further notice if the motion hearing date is continued by agreement of all parties or by court order.

d. In Chancery Court, if a motion is reset by agreement, a filed notice of the new motion hearing date must be provided to the Clerk by faxed letter or other means. This notice must be provided by 11:59 p.m. CST on the Monday before the Friday on which the motion is to be heard. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 26.04. Motions, Responses, Replies and Briefs

a. Motions shall clearly state with particularity the grounds therefore, and shall set forth the relief or order sought as required by Tenn. R. Civ. P. 7.02.

b. Every motion or response which may require the resolution of an issue of law, and every motion or response in which legal authority is relied upon, shall be accompanied by a memorandum of law and facts in support thereof. Any motion, response, brief or memorandum of law that makes reference to a transcript or deposition shall make reference to the specific page(s) of the transcript involved. Whenever a memorandum cites an unreported Tennessee decision or a decision from a court of another state or federal jurisdiction, counsel shall attach a complete copy of the opinion to the memorandum; counsel shall also furnish a copy of any such opinion to opposing counsel.

c. When requesting leave to amend a pleading, the moving party must attach a copy of the proposed amended pleading to the motion so that it becomes part of the record. [Comment: Unless the record before the appellate court shows the substance of the proposed amendment, it cannot determine whether the court acted properly on the motion. *Taylor v. Nashville Banner Publ'g Co.*, 573 S.W.2d 476 (Tenn. Ct. App. 1978).]

d. If the motion is opposed, a written response to the motion must be filed personally and served on all parties. The response shall state with particularity the grounds for opposition to the motion, supported by legal authority, if applicable. If no response is filed, the motion shall be granted with the exception of certain proceedings in Probate. (See Rule 39).

e. Responses to motions, including counter-affidavits, depositions, briefs or any other matters presented in opposition to motions, must be filed with the clerk's office by 11:59 p.m. CST on Monday before the Friday on which the motion is to be heard. The response must also be filed personally and served upon all parties no later than 11:59 p.m. CST on the Monday before the Friday on which the motion is to be heard. If Monday falls on a holiday and the offices of the court clerks are closed, responses to motions must be filed with the clerk's office by 11:59 p.m. CST on the Tuesday before the Friday on which the motion is to be heard. In case of a Monday holiday, service of the response on all parties must occur no later than 11:59 p.m. CST Tuesday.

f. Replies to responses, if any, must be filed with the clerk's office by 11:59 p.m. CST on the Wednesday before the Friday on which the motion is to be heard. The reply must also be served on all other parties no later than 11:59 p.m. CST on the Wednesday before the Friday on which the motion is to be heard.

g. IF NO RESPONSE IS TIMELY FILED AND PERSONALLY SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING.

Counsel or pro se litigant shall then submit the proposed order consistent with Local Rule 33. The order shall recite that no response was timely filed or personally served. See Rule 39 for exceptions to this Rule in certain Probate matters. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 26.05. Docketing Motions for Hearing and Disposition

a. **Docketing Motions for Hearing and Disposition.** Docketing of a motion will be complete upon filing the motion with the Chancery, Probate and Circuit Court Clerks, provided it contains notice of a hearing date. If no hearing date is requested upon the filing of the motion, either counsel may file a notice of hearing for a previously filed motion and serve opposing counsel and/or party.

b. **Notice of Hearing and Disposition.** Any party filing a motion in Chancery, Probate or in Circuit Court shall serve filed notice of the date and the time of the hearing upon all other parties. The notice shall advise all other parties that failure to file and serve a timely written response to the motion will result in the motion being granted without further hearing.

c. Domestic relations motions are exempted from this rule and are governed by § 37.05. (As amended by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 26.06. Personal Service Defined

For purposes of this Rule, personal service means delivery, mailing, e-service or transmission of a facsimile (i.e., “fax” or “telecopier”) such that the document served is physically received by the specified date and time. In the event personal service is affected by facsimile, an original copy of the document shall follow by delivery or mail. In accordance with Supreme Court Rule 46A, e-service means the automatically generated electronic transmission, by and through an e-filing system, of a notice to all participants in a case who are registered users that a document has been e-filed. Electronic service does not include service of process or *Summons* to gain jurisdiction over persons or property. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 26.07. Special Setting of Motions

Where special circumstances warrant, motions may be specially set with the Calendar Clerk of each court at times other than on the regular motion docket. A motion to set an expedited hearing shall be accompanied by an attached proposed order. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 26.08. Failure to Appear at a Motion Hearing; Late Appearance

If any party does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike or adjudicate the motion. Counsel who will be late for a motion hearing shall notify the Calendar Clerk of the assigned court in advance of the hearing or have an announcement to that effect made at the call of the motion docket. If

the movant fails to appear, and the court strikes the motion, the court may tax, as costs, reasonable fees and expenses in favor of the opposing party who did appear at the scheduled hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.09. Striking or Postponement of Motions

After a motion has been docketed, the movant may strike or postpone a motion upon timely notice to all parties. If a motion is to be stricken or postponed by agreement, counsel shall timely notify the Calendar Clerk of the assigned court. If any party strikes or postpones a motion without giving notice, the court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.10. Agreed Orders

If an agreed order is to be submitted disposing of a motion, counsel shall advise the Calendar Clerk of the assigned court prior to the hearing or may so announce at the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.11. The Hearing

a. **Oral Argument.** Motions with responses shall be orally argued unless waived by agreement, excepted by order of the court, or where a prisoner proceeds *pro se*.

b. **No Witnesses.** The motion hearing shall be upon the pleadings, affidavits or depositions unless a party requests and obtains permission of the court for the introduction of oral testimony before the time of the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.12. Motions in Limine

Motions in limine are governed by Local Rule 30. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.13. Motions to Compel Discovery

Special requirements related to motions involving discovery disputes are addressed by Local Rule 22.08-22.12. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.14. Class Action Determination

Within sixty (60) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under Rule 23.03(1) Tenn. R. Civ. P. whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where it is held that the determination shall be postponed, a date shall be fixed by the Court for the renewal of the motion. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 26.15. Default Judgement Motion with Certificate

All motions for default judgment seeking a judgment for liquidated damages shall specifically state the amount sought and be accompanied by a certificate which shall substantially comply with the default judgment certificate in the appendix. A request for non-liquidated damages will require a damages hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 27. ADMINISTRATION AND SCHEDULING OF CIRCUIT AND CHANCERY CASES

§ 27.01. Administration of Cases

Administration of cases in the Chancery Courts and Circuit Court VII (exercising its jurisdiction in Probate matters) will be set by the individual Chancery Court and in general pursuant to 27.02, 27.03 and 27.04 or pursuant to Rule 39 for all Probate matters. Administration of Circuit Courts handling civil jury or non-jury (non-family law cases) will be handled pursuant to Rule 27.02, 3 [27.03], 4 [27.04] and 5 [27.05]. Family law cases will be set by the individual judge. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 27.02. Method of Setting Cases

Cases shall be set for trial in accordance with the following:

A. CHANCERY:

1. By agreement of counsel after consultation with the Calendar Clerk for each Part of Chancery Court.
2. At a Scheduling Conference with the originating Chancery Court.
3. By motion to the individual Chancellor in Chancery cases.
4. At the discretion of a Chancellor with notice to counsel in Chancery cases.

B. PROBATE:

1. Pursuant to Rule 39.11 for Probate matters.

C. CIRCUIT:

1. At a Scheduling Conference with the originating Circuit Court.
2. By agreement of the parties in Circuit cases for a date within the “open docket”.
3. By motion to the Assignment Judge on his/her regularly scheduled motion docket for all Circuit cases where agreement is not possible, date has not been set at a Scheduling Conference, or dates sought are beyond the “open docket”.
4. At the discretion of the Assignment Judge, with notice to counsel, for expedited cases. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 27.03. Certifying Cases Ready When Set

When a case is set by agreement or when a case is set by motion without an objection to having it set, all counsel are certifying they are available for trial and that the case will be in all respects ready for trial on the trial date subject to the provisions of T.R.C.P. 16. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 27.04. Workers' Compensation Benefit Review Conference

All workers' compensation cases shall be referred for a benefit review conference. See Tenn. Code Ann. §§ 50-6-237 and 50-6-239(a). No workers compensation case shall be set for trial unless the parties certify to the Court that the benefit review conference process has been completed or is not necessary pursuant to Tenn. Code Ann. § 50-6-239(c). This rule does not apply to accidents or injuries occurring after January 1, 2005 as Tenn. Code Ann. §50-6-203(a) will apply. (Added by order filed November 5, 2007, effective November 5, 2007.)

Compiler's Notes. The references to Tenn. Code Ann. 50-6-237, 239(a), 239(c), and 50-6-203(a) continue to apply as to injuries occurring prior to July 1, 2014. These statutes, as rewrit-

ten by the Workers' Compensation Reform Act of 2013, Acts 2013, ch. 289, effective July 1, 2014, no longer refer to benefit review conferences.

§ 27.05. Continuances in Chancery and Circuit Cases

a. Cases may be continued only by leave of the originating court by motion or upon an emergency request or by the judge to whom a case is assigned on the date of trial. They may not be continued by agreement of counsel without consultation of the court. Cases will not be continued except for good cause which shall be brought to the attention of the court as soon as practicable before the date of the trial.

b. Absence of a witness will not be a cause for a continuance unless the subpoena has been issued and dated ten days prior to a trial for a local witness and 14 days for an out of county witness, pursuant to Local Rule 28.02.

c. When a case is set by agreement or set upon motion without an objection to having it set, failure to have completed discovery, inability to take a deposition or failure to have completed any other trial preparation will not be a cause for a continuance.

d. If a case is continued, it must be continued to a date certain. The reason for the continuance must be contained in the order.

e. If a continuance is granted, the court may award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses and tax the same as court costs. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 27.06. Administration and Assignment of Circuit Court Jury Cases

a. The Presiding Judge shall designate a Circuit Judge as Assignment Judge.

b. The Assignment Judge, after consultation with the other Circuit Judges trying jury cases, will schedule the jury weeks. The Assignment Judge shall establish the "open" and "closed" docket.

c. The Circuit Court Clerk shall assign jury cases to the various courts for pre-trial proceedings.

d. Scheduling or Planning Conference. Each court shall establish a method by which the parties shall meet face to face within 4-6 months of filing. This conference may be held by the judge, law clerk, court officer, special master or in such other manner as established by the individual court. During this conference, the parties with the help of the judge or designee will discuss the track assignment of the case as outlined in section f below, use of ADR,

preparation of a scheduling order, a second conference or pretrial if necessary, a trial date if applicable or another appropriate deadline to manage the case.

e. Differentiated Case Management. Every action filed in the Circuit Court shall be designated as a GSA, Expedited, Standard or Complex case. Notwithstanding the following, the parties may apply to the court to modify the designation. The designation will govern the administration and scheduling of the case.

1. GSA:

General Sessions Appeals are presumptively classified as "GSA". These are cases that can be prepared for trial with minimal discovery and other pretrial proceedings. The completion goal is 180 days from the date of filing. GSA cases must be set for trial in accordance with Local Rule 20.

2. Expedited:

A personal injury case with soft tissue damage, limited discovery needs, with no agreement for the use of ADR and party insistence on trial. The completion goal is 270 days from date of filing.

3. Standard:

A case with no unique circumstances requiring lengthy discovery or trial time. All cases are presumptively classified as "standard" unless otherwise designated. The completion goal is one year from date of filing.

4. Complex:

A case that will require lengthy discovery, trial preparation and or trial time, by reason of number of parties involved, number of claims and defenses raised, legal difficulty of issues presented, factual difficulty or a combination of these factors, which requires a customized Scheduling Order which contains dates for ADR, completion of discovery and time to set a trial. The completion goal is two years from date of filing.

f. Scheduling Orders. All cases shall operate under a Scheduling Order that establishes deadlines for completion of discovery, ADR, trial dates or date by which trial must be set. The date by which a trial must be set or the trial date shall appear in the first numbered paragraph of each Scheduling Order. If an order setting the case for trial is not filed with the Clerk by the required date, then the case shall be automatically dismissed without further notice. The Scheduling Order may not be changed without leave of court.

g. Central Assignment System. All Circuit Court cases for jury trials will be set on a central assignment docket, which will be administered as follows:

1. The Circuit Court Clerk shall assign an employee to oversee and be responsible to the Assignment Judge for the administration of this system (hereinafter called the "Assignment Clerk").

2. A central docket will be maintained in the clerk's office by the Assignment Clerk for the setting of jury cases for trial.

3. The Assignment Judge or his/her designee shall assign the cases set for trial in a given week, to the various Circuit Courts for trial, until all cases for that week are completed. In the event a case is not reached for trial in any available court, on the day it is set, the case will be carried over from day to day without loss of its place in the order of trial until it is either reached for trial or transferred to a ready court. In the event of hardship, a lawyer may apply to the court for resetting at the end of the second day.

4. Any case may be exempted by the Assignment Judge or originating judge from the central assignment system and set for trial in the original court by a specific order. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 27.07. Central Assignment of Circuit Court Non-Jury Cases for Trial

a. All non-jury trials may be set by agreement provided the date is approved by the Assignment Clerk. If a trial will last more than one day, the Assignment Clerk must be notified.

b. Motions to set will be heard in the court to which the case was first assigned when filed. The availability of dates must be secured from and approved by the Assignment Clerk.

c. All orders setting non-jury cases for trial will include an estimation by counsel of how long the trial should last. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 28. SUBPOENAS

§ 28.01. Subpoenas Issued by Clerk

In civil actions, subpoenas filed by conventional paper copy shall be issued and signed by the clerk in triplicate. Subpoenas e-filed shall be submitted with one copy by electronic form, but see Rule 6.01 exclusions for Chancery Court. The clerk shall not issue a subpoena unless it shows on its face compliance with Tenn. R. Civ. P. 45.07. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 28.02. Time for Issuing Subpoenas

Subpoenas for a local witness must be issued and dated by the clerk no later than ten (10) days before the date of trial unless prior approval has been granted by the Judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the clerk no later than fourteen (14) days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county Sheriff or other authorized person to effect service of the subpoena. The foregoing notwithstanding, the clerk shall not refuse to issue a subpoena even if requested after the dates set forth above. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 28.03. Address of Witness

Counsel of record shall be responsible for providing street address and phone numbers, if known, on the requested subpoena(s). (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 28.04. Prison Inmates

The attendance of prison inmate witnesses or parties in civil cases remains governed by T.C.A. § 41-21-304. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 28.05. Subpoenas For Medical Records

All subpoenas issued by the Clerk or Clerk and Master for medical records shall reflect compliance with the Health Insurance Portability and Account-

ability Act (H.I.P.A.A.). See 45 C.F.R. § 164.512(e). The Clerk of Court or Clerk and Master shall not issue a subpoena pursuant to T.R.C.P. 45.02 for medical records unless the subpoena form includes the following:

HIPAA NOTICE

A copy of this subpoena has been provided to counsel for the patient or the patient by mail or facsimile on the ____ day of _____, 20____ so as to allow him/her seven (7) days to:

(A) serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and

(B) simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03, 26.07 and Local Rule § 22.10.

If no objection is made within seven (7) days of the above date, you shall process this subpoena and produce the documents by the date and time specified in the subpoena. The signature of counsel or party on the subpoena is certification that the above notice was provided to the patient. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 29. PRE-TRIAL PROCEDURE IN CIVIL CASES

§ 29.01. Required Exchange of Witnesses and Documents

At least seventy-two (72) hours (excluding weekends and holidays) before the trial of a civil case, opposing counsel shall either meet face-to-face or shall hold a telephone conference for the following purposes:

- a. to exchange names of witnesses, including addresses and home and business telephone numbers (if not included in interrogatory answers), including anticipated impeachment or rebuttal witnesses; and
- b. to make available for viewing and to discuss proposed exhibits.

In the event that the parties hold a telephone conference rather than a face-to-face meeting, the exhibits shall be made available for viewing before the conference. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 29.02. Notice of Intent to Use Audio/Visual Recording or Animation is Required

When a party intends to utilize an audio and/or visual recording or animation in a jury trial, counsel must file a notice to all adverse counsel at least ten (10) days before a trial. Adverse counsel shall be permitted to review the recording or animation in the form to be offered at trial and shall be allowed to copy the recording at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 29.03. Briefs in Non-Jury Civil Cases

In all non-jury civil cases, except divorces and General Sessions Court appeals, trial briefs are required. At least seventy-two (72) hours (excluding weekends and holidays) before the trial of a civil case, trial briefs shall be submitted to the court and furnished to opposing counsel. If an issue to be litigated at trial has been briefed in pre-trial motions and counsel believes that the motion brief adequately covered the issue, counsel may refer the court to the motion brief in lieu of briefing the issue for trial. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 30. MOTIONS IN LIMINE

a. All anticipated objections to deposition testimony including those made pursuant to T.R.C.P. 32.02 and 32.04, must be made by filed motion in limine filed at least five (5) days before trial or the objection is waived.

b. Counsel are encouraged to raise other appropriate evidentiary objections by filed motion in limine filed at least five (5) days before trial.

c. Motions in limine related to audio and/or video recording or animation, are governed by Local Rule 29.02. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 31. JURY TRIALS IN CIVIL CASES**§ 31.01. Procedure**

In any civil case in which a jury is demanded, the words “**JURY DEMAND**” will be typewritten in capital letters on the first page of the pleading opposite the style of the case above the space for the case number. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 31.02. Number of Jurors

In civil cases, a jury of six (6) will be convened unless one of the parties specifically made a written request for a jury of twelve. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 31.03. Challenges

Agreeing to a jury of less than twelve (12) will not affect the number of challenges nor the manner of making them. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 31.04. Jury Instructions

a. **Jury Instructions.** Requests for special jury instructions shall be filed at the end of the first day of trial or as otherwise directed by the court. Jury instructions may be requested thereafter only when the issue could not have been reasonably anticipated by counsel. When counsel submits special requests copies shall be furnished to adversary counsel. When a request for an instruction is made and the request is for a Tennessee Pattern Jury Instruction verbatim, the request shall be made by reference to “TPI (Civil) No: ____” with use of the most recent addition. If the request is for a modification of an existing instruction, the request shall identify the instruction to be modified by number and identify the deletion or addition. A request for modification or additional instructions must be accompanied by appropriate authority.

b. Jury Interrogatories. Requests for jury interrogatories shall be filed at the end of the first day of trial or as otherwise directed by the court. Jury interrogatories may be requested thereafter only when the issue could not have been anticipated by counsel. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 31.05. Copies for Jurors

Counsel or a pro se litigant offering documentary evidence which he or she desires jurors to read shall provide a sufficient number of copies to enable each juror in court to have his or her own copy plus one copy for the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 32. COURT REPORTERS IN CIVIL CASES

It is the responsibility of parties to arrange for court reporters in civil cases. Proceedings may not be postponed or delayed because of a court reporter's absence or tardiness. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 33. ORDERS AND JUDGMENTS IN CIVIL CASES

§ 33.01. Preparation and Submission of Orders and Judgments

a. Orders. Unless the court directs otherwise, attorneys for prevailing parties will prepare orders for entry by the court. All orders must be received by the clerk and served on opposing counsel within seven days following the day on which the ruling is made by the court.

b. Written Findings and Conclusions. Requests for written findings of fact and conclusions of law should be accompanied by proposed findings of fact and conclusions of law and submitted in writing before the entry of judgment. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 33.02. Disagreements over Contents of Orders and Judgments

Orders containing only the signature of the attorney preparing the order will not be entered immediately but will be held by the clerk for three days. When opposing counsel receives a copy of a proposed order, he or she shall notify the Calendar Clerk of the assigned court if there is any objection to the order. If the Calendar Clerk receives no objection within the three-day period, the order will be submitted to the judge. When there is a disagreement as to the terms of the order, each party will submit a proposed order for the court's consideration. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 33.03. Court Costs

a. All final judgments shall provide for the taxing of court costs. The clerk may refuse to enter any proposed agreed final judgments or compromise and settlement order until the court costs are paid.

b. Whenever it appears to the clerk that a judgment has been satisfied but that court costs have not been paid, the clerk may apply to the court for a retaxing of court costs. The clerk shall notify the parties of the application and the date and time it will be considered by the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 33.04. Payment and Satisfaction of Judgments

a. Funds paid to the clerk by check on local banks will not be disbursed until ten (10) days after the clerk receives the check. Funds paid to the clerk by checks drawn on out-of-town banks will not be disbursed until fourteen (14) days after the clerk receives the check. Alimony and child support checks may be disbursed sooner at the discretion of the clerk.

b. Orders for disbursing funds, other than agreed orders, must be final before the clerk will disburse the funds.

c. Upon receipt of payment in satisfaction of a judgment, whether through the clerk or otherwise, counsel will file a notice of satisfaction of judgment. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 34. FUNDS PAID INTO COURT

Funds paid into court are not invested unless the clerk is directed in writing to invest the funds by the party on whose behalf the funds are held or by the court. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 35. [REPEALED]

Compiler's Notes. This rule was repealed effective July 1, 2019. It concerned the failure to post appellate bond.

RULE 36. [RESERVED]**RULE 37. SPECIAL PROCEDURES FOR DIVORCE OR DOMESTIC RELATIONS CASES****§ 37.01. Uncontested Divorce Cases**

a. When a divorce case is based on the ground of irreconcilable differences, it is not necessary to move for a default judgment. Once the statutory requirements have been met, such cases may be set for trial by consultation with the Calendar Clerk of the assigned court or they may be submitted on interrogatories by leave of the court.

b. When a party in default desires to be heard on any matter other than the basic cause of action, he or she shall notify the court at least seven days prior to the hearing of the matters upon which he or she desires to be heard and shall file a brief statement setting forth the nature of the matter.

c. If a marital dissolution agreement in a divorce action based on irreconcilable differences is delivered by personal service as allowed by T.C.A. § 36-4-103, the statutory requirements regarding service will be strictly construed. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 37.02. Contested Divorce Cases

a. In all contested divorce cases both parties shall file, on forms provided by the clerk, a certificate of readiness and sworn financial statements subject to such protective orders as may be applied for and granted. (See sample form set forth in the Appendix of Forms.) In the event both attorneys do not sign or one disagrees to filing, the attorney seeking a court date shall file a motion asking

the court to enter a certificate of readiness and set the case. The motion should state that the case is at issue and adverse counsel refuses to sign the certificate of readiness.

b. Both parties shall file a list of marital property and separate property along with a written proposal suggesting a division of the property. This shall be in addition to the requirements of Local Rule 29. The preparation of these documents shall be subject to protective orders as may be applied for and granted. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 37.03. Designation of Parties

It is requested that in the complaint, answer and other pleadings the parties or counsel avoid the use of such terms as plaintiff, defendant, counter-plaintiff and counter-defendant, using instead such easily understood terms as husband and wife. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 37.04. Pendente Lite Hearings

Complaints which include requests for pendente lite relief may be set for hearing to show cause by order or by motion, but such relief may only be granted in emergency situations. Proof of need may be presented in affidavits or through the testimony of witnesses at the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 37.05. Special Procedures for Divorce or Domestic Relations Cases

Domestic Relations Order (November 17, 2010), governs the time frame for filing a motion prior to the scheduled hearing date. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

RULE 38. SPECIAL PROCEDURES FOR ADOPTIONS

§ 38.01. Filing

All adoption complaints shall be filed with the Circuit Court Clerk. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 38.02. Requirements for Setting Case

In any case when the adopting parents are the grandparents, the aunt or uncle or the stepparents of the child or children to be adopted, the case shall not be set for adjudication by the clerk until the following documents have been filed:

- a. the birth certificate or certificates of the child or children;
- b. a certified copy of the marriage license of the adopting petitioners;
- c. a certified copy of the final judgment of divorce in the event that either of the adopting petitioners has previously been married to another person;
- d. a death certificate, if either natural parent is deceased;
- e. a death certificate of either petitioner’s former spouse if that person is deceased. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 38.03. Presentation of Testimony

The testimony of adopting petitioners will be heard in chambers if it is presented in person or, in the event the adopting petitioners are not within the State of Tennessee at the date of the adjudication, their testimony may be presented by interrogatory or deposition. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 38.04. Attendance of Adoptive Child

Children fourteen (14) years of age or *over* are required to attend the adoption proceeding. If the child or children are less than fourteen years of age, the adopting petitioners may decide whether or not the child or children will attend the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 38.05. Setting of Hearing

When an adoption case is ready to be set for hearing, counsel for the adoptive parent shall notify the clerk, who shall post a list of adoption cases to be heard at least one week prior to the hearing. (Added by order filed November 5, 2007, effective November 5, 2007.)

RULE 39. SPECIAL PROCEDURES FOR PROBATE MATTERS

§ 39.01. Attorneys

a. With the exception of petitions by an adult to change his/her name and applications to open an estate pursuant to the Small Estate Exemption, all fiduciaries shall be represented by and all petitions and motions shall be filed by attorneys licensed to practice law in Tennessee, except that attorneys not licensed in Tennessee may appear and file pleadings provided that they have complied with Rule 19 of the Rules of the Supreme Court of Tennessee, and further except that adult persons acting in their individual capacity may file pleadings and appear pro se before the Court. However, fiduciaries who are not attorneys may submit their annual and final accountings and apply for their annual and final fee requests without the intervention of their attorney.

b. An attorney who files a petition, opens an estate, or who is representing an Interested Party becomes the attorney of record for that party by filing a pleading or notice of appearance and shall remain attorney of record unless and until the Court grants permission to withdraw upon a showing of good cause pursuant to Local Rule 5.02. However, Guardians ad litem in conservatorships or guardianships shall automatically be relieved of their responsibilities upon the creation of conservatorships and/or guardianships unless the order expressly provides otherwise. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.02. Definitions; Service of Process; Notice; Interested Parties

a. **“Service of Process”**: When required by statute or these Rules, Service of Process shall be effected by service of the Petition and a Summons in conformity with the requirements of T.R.C.P. 4 and due process requirements.

b. **“Notice”**: When required by statute or these Rules, Notice to all Interested Parties shall be given by mailing, faxing, e-service or hand delivery of the required documents to each Interested Party (or their attorney) in conformity

with requirements of T.R.C.P. 5. If an Interested Party is a minor or incompetent person, Notice shall also be given to the legal guardian(s) and/or custodial parent(s) of the minor and to the conservator of an adult person. If Interested Parties are under disability and have no custodial parent, legal guardian or conservator, such shall be brought to the Court's attention. The foregoing notwithstanding and in addition to the written forms of Notice set forth above, Notice of the intent to file the initial Petition to admit a non-holographic will to probate to obtain Letters Testamentary may be given by oral notice, whether in person, by phone or otherwise. If a party announces in Court that oral notice was provided, written confirmation of prior oral notice shall be filed with the Clerk.

c. **“Adversary Proceeding”**: Adversary Proceedings include but are not limited to Civil Actions as defined under T.R.C.P. 2 and proceedings to remove a fiduciary, surcharge a fiduciary, probate a lost or destroyed will, determine beneficiaries, construe a will, cancel a devise, partition property for the purposes of distribution, determine pretermitted share, and for revocation of probate of a will. Other proceedings may be declared Adversary Proceedings. Adversary Proceedings shall be prepared, discovery conducted, and tried as Civil Actions pursuant to the Tennessee Rules of Civil Procedure, Rules of Evidence and these Local Rules.

d. **“Interested Parties”**: An Interested Party is a person or entity having an interest in a matter before the Court. Depending on the type of estate or matter at issue, an Interested Party may include a spouse, beneficiary, legatee, devisee, creditor, fiduciary, and next of kin. Next of kin are those persons entitled under T.C.A. § 31-2-104 to inherit as if the decedent died intestate.

1. In a decedent's estate, an Interested Party shall include:

a. In a solvent testate estate, the surviving spouse and all legatees, devisees and beneficiaries named in the testamentary instrument being offered or admitted to Probate;

b. In a solvent intestate estate, the surviving spouse and intestate heirs of the decedent as described at T.C.A. § 31-2-104;

c. In an insolvent estate or one that may become insolvent, whether testate or intestate, the persons set forth in (a) and (b) above and, in addition, creditors of the decedent whose claims may be adversely affected by a ruling on the matter(s) at issue.

d. In a matter contesting the validity of a testamentary instrument offered or admitted to Probate, the surviving spouse and intestate heirs of the decedent as described at T.C.A. § 31-2-104, all legatees, devisees and beneficiaries named in the testamentary instrument being offered or admitted to Probate, and any legatees, devisees, and beneficiaries of any preceding testamentary instrument to that being offered or admitted to Probate;

2. In a Conservatorship, Interested Parties include the spouse and next of kin of the respondent and the person(s) who have been primarily responsible for the respondent's person and/or finances.

3. In a Guardianship, Interested Parties include both parents of the minor, the next of kin if both parents are deceased, legal guardians and person(s) primarily responsible for the minor's person and/or finances.

4. In a proceeding to terminate a trust, Interested Parties include current income beneficiaries, remainder beneficiaries of the trust, all fiduciaries and the grantor, if living.

5. Notice and Service of Process need not be served upon an Interested Party who joins in a petition as a Petitioner or who files a sworn waiver or consent.

6. No action of Court shall be set aside due to the failure of an Interested Party to receive Notice unless the Interested Party shall timely appear and show substantial prejudice resulting from the lack of notice and a reasonable likelihood of prevailing on the merits. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 39.03. Estates of Decedents

a. **Petitions to Probate Wills, Codicils and other Testamentary Instrument:** A verified Petition to probate a will, codicil, other testamentary instrument or to administer an intestate estate shall set forth such information as is required by statute and these Rules. In a testate estate the petition shall specifically include the names, and if known, addresses and relationships of all legatees and devisees under the testamentary instrument(s) and in addition thereto that of the surviving spouse and next of kin (even though not named in the will). The value of real and personal property to be administered need not be stated if bond is expressly waived and the named executor or alternate executor is willing to serve.

b. **“Common Form” Proceedings:** Petitions to probate in common form may be heard either by the Court or by the Probate Master. Petitioner is encouraged to give Notice to all Interested Parties prior to the hearing of the fact that the petitioner is presenting the will for probate. The Probate Master may hear these matters provided the petition and all accompanying documents are in proper order, as determined by the Probate Master, and there are no questions of law to be determined. If there is a question of law or if the Probate Master declines to hear the petition, the petition shall be heard by the Court.

c. **“Solemn Form” Proceedings:** Petitions to probate in solemn form must be heard by the Court. Service of Process shall be given as required by statute.

d. **Holographic Will Proceedings:** All petitions for the probate of holographic testamentary instrument(s) will be heard by the Court. Notice shall be given to all Interested Parties, including the surviving spouse and next of kin whether or not named as beneficiaries under the testamentary instrument(s), of the fact that the petitioner is presenting the will for probate. If Notice is not provided, bond may be required regardless of express waiver of such in the will. The testimony of witnesses concerning the handwriting of the decedent must be taken in open court. Upon a showing of good cause the Court may allow such evidence to be taken by affidavit or oral deposition.

e. **Proceedings to Administer Intestate Estates:** Petitions to appoint an Administrator of an intestate estate may be heard by the Court or the Probate Master. Notice shall be given to all Interested Parties, including the surviving spouse and next of kin, of the fact that the petitioner is filing a petition to administer the estate of the decedent and that no will can be located. If Notice is not provided, bond may be required. The Probate Master may hear these matters provided the petition and all accompanying documents are in proper

order, as determined by the Probate Master, and there are no questions of law to be determined. If there is a question of law or if the Probate Master declines to hear the petition, a hearing on the petition may be set on the court docket. The Petition shall state the approximate respective values of the real and personal property being administered if known, the names and addresses of the spouse and next of kin of the decedent, and whether bond, inventory and annual accountings are waived by written waivers from the spouse and all of the next of kin.

f. Small Estate Administration Proceedings: Estates to be administered under the provisions of T.C.A. § 30-4-101 et seq. (The Small Estates Act) may be heard by the Court or the Probate Master. Notice shall be given to all Interested Parties, including the surviving spouse and next of kin, of the fact the petitioner is filing a petition to be appointed personal representative of the estate under the small estate exemption. If Notice is not provided, bond may be required. The Probate Master may hear these matters provided the affidavit and all accompanying documents are in proper order, as determined by the Probate Master, and there are no questions of law to be determined. If there is a question of law or if the Probate Master declines to act upon the affidavit, a hearing on the affidavit may be set on the court docket. If bond is to be waived, consent forms executed by the spouse and all next of kin allowing the Affiant to administer the small estate without bond must accompany the affidavit. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 39.04. Trusts

a. Termination of Trust: Petitions to terminate a trust must be heard by the Court. Service of Process shall be given to all Interested Parties who do not join in the petition. The petition shall be verified and set forth facts concerning the creation of the trust, the purpose of the trust, the beneficiaries of the trust and the nature of their beneficial interest, the reasons for the termination of the trust, the appropriate share of each beneficiary who is to share in the proceeds of the trust upon termination, and whether the termination has been agreed upon by all Interested Parties.

b. Other Trust Proceedings: Any ruling that may affect a substantive right of an Interested Party under a trust shall require due process of law prior to the determination of such rights by the Court. Whether motions for instructions, or requests for the Court to construe a trust, to determine whether a bequest has lapsed, or to remove or replace a fiduciary, etc. require the filing of a Petition with service of process or whether the matter may be attended to routinely upon routine Notice as distinguished from the requirements of Service of Process shall depend on the substantive nature of the underlying rights to be determined. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.05. Conservatorships

a. Petition for Conservatorship: The petition shall be verified and contain the information required by statute and these Rules. Service of Process shall be provided to the respondent as required by statute and petitioner shall additionally provide Notice to all Interested Parties who do not receive notice

from the Clerk. An order (in the form required by the Court) shall be submitted with the petition containing the appropriate blanks for the appointment of a Guardian ad litem and the setting of a hearing. The Court will appoint a licensed attorney as the Guardian ad litem and designate the hearing date. The Property Management Plan does not need to be filed with the Petition; however, the Property Management Plan shall be filed with copies provided to all Interested Parties including the Guardian ad litem no less than three (3) days prior to the hearing on the Petition, unless good cause is shown why such could not be done.

b. Orders Creating Conservatorship and Awarding Initial Fees: To expedite the issuance of Letters of Conservatorship, counsel for the petitioner may submit two orders, one pertaining to the appointment of the conservator and a second which pertains only to fees. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.06. Guardianships

a. Petition for Guardianship: The petition shall be verified and shall contain the information required by statute and these Rules. Notice shall be provided to all Interested Parties. Unless the petitioner is a parent of the minor or is a court appointed guardian of the person, the Court will appoint a licensed attorney as Guardian ad litem. When applicable and to facilitate such appointment, an order (in the form required by the Court) shall be submitted for the appointment of a Guardian ad litem. If the petitioner is a parent of the minor or court appointed guardian of the person, the petitioner may set the matter for hearing prior to the appointment of a guardian ad litem; however, if the Court determines at the hearing that the appointment of a Guardian ad litem may be in the best interest of the minor, the matter shall be set for further hearing following the appointment of a Guardian ad litem.

b. Orders Creating Guardianship and Awarding Initial Fees: To expedite the issuance of Letters of Guardianship, counsel for the petitioner may submit two orders, one pertaining to the appointment of the guardian and a second which pertains only to fees. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.07. Sale of Real Estate

a. Petition to Sell Real Property: Fiduciaries who desire to sell real property of a decedent or ward must file a verified petition to obtain Court approval. However, executors expressly authorized under a will to sell real estate are not required to obtain Court approval.

1. Decedent's Estate:

The personal representative must file a verified petition which establishes that the personal property is insufficient to pay debts and/or costs of administration of the decedent's estate. Service of Process shall be given to all persons who would inherit the real property if not sold and all persons claiming an interest in the real property. Interested Parties shall receive Notice.

2. Conservatorship/Guardianship:

The Conservator or Guardian must file a verified petition which establishes that the proposed sale is in the best interest of the ward or is necessary to pay the debts, taxes and/or expenses of the ward. Service of Process shall be given

to all persons who have an interest in the real property. Interested Parties shall receive Notice.

3. Listing Agreement:

Unless the Court expressly orders otherwise, if a petition to sell the real property of a deceased's estate or of a ward in a conservatorship or guardianship is granted, the order granting the petition shall authorize the fiduciary to market and/or to list the real property for sale by a licensed real estate agent or auctioneer. The auction and/or listing agreement and the resulting contract for the sale of the subject property must expressly state that the proposed sale of the property is Subject to Court Approval.

4. Motion to Approve Contract:

Once a proposed contract to sell real estate is obtained, a motion must be filed and served pursuant to Local Rule 26 to obtain Court approval. Notice shall be given to all Interested Parties. A copy of the contract shall be attached to the motion along with a report of the assessed value of the property by the County Assessor of Property. The Court may also require one or more professional appraisals of the property. Any proposed contract of sale must be approved by the Court prior to closing. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.08. Name Change

a. **Adult:** The verified petition must comply with the statute and shall state the full legal name of the Petitioner, all prior names by which the Petitioner has been known, the place of residence of the petitioner(s), the birth date, age, social security number of the individual whose name is to be changed, and the State where the original birth certificate was issued. Copies of the original birth certificate, social security card and official photo identification shall be submitted with the petition. The individual whose name is to be changed must appear in Court at the hearing.

b. **Minor:** The verified petition to change the name of a minor must comply with the statute and be sworn to and signed by both parents and include copies of the original birth certificates of the child and both parents, social security card and official photo identification of both parents, photograph of the minor and social security card of the minor, if any. Both parents and the minor must appear in Court. If both parents do not join in the Petition or if the identity or location of a parent is unknown, the petition must be specific as to all pertinent facts including all efforts to identify or locate the parent who did not join in the Petition. If the father is not identified on the birth certificate, legitimation proceedings must be completed prior to filing of a petition to change the name of the minor child. Service of process is required for any parent or guardian who does not join in the petition. The verified petition must establish by clear and convincing evidence that the proposed name change is in the best interest of the minor, otherwise the petition shall not be granted. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.09. Adversary Proceedings/Civil Actions

Adversary Proceedings shall be prepared, discovery conducted and tried as Civil Actions pursuant to the Tennessee Rules of Civil Procedure, Rules of Evidence and these Local Rules. A party may initiate an Adversary Proceeding/

Civil Action by the filing of a petition or complaint pursuant to T.R.C.P. 3, with service of process served on all defendants/respondents pursuant to T.R.C.P. 4. Additionally, the party initiating an Adversary Proceeding/Civil Action shall serve Notice on all other Interested Parties (those not plaintiff or defendant) that the Adversary Proceeding has commenced. No further notice of such action need be given to any Interested Party who is not a plaintiff or defendant in the Adversary Proceeding unless they intervene in the Adversary Proceeding. The caption of pleadings concerning Adversary Proceedings/Civil Actions arising out of an estate pending in Probate Court, shall include the name of the original estate and that of the first petitioner and first respondent in the related Adversary Proceeding. The Court may assign a derivative docket number to separately identify the Adversary Proceeding/Civil Action. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.10. Guardian ad litem

a. The Court will appoint a Guardian ad litem upon the filing of a petition to appoint a conservator or guardian; provided, however, in proceedings to appoint a guardian, the Court may waive the appointment of a Guardian ad litem if good cause is shown.

b. The Court may appoint a Guardian ad litem in matters involving the sale, improvement, or mortgage of any real property in which a minor or other person under disability has an interest; in matters involving the sale or disposition of a ward's personal property; in matters involving possible impropriety by a fiduciary; in matters concerning unauthorized encroachments or questionable management of a decedent's estate or a ward's assets under guardianships or conservatorships; in any matter the Court believes to be in the best interest of a minor, incompetent, absentee, unknown heir or Interested Party or to further the administration of justice.

c. The Guardian ad litem shall conduct an inquiry and file a report with the Court at least three (3) days prior to the hearing. The report shall contain the information required by statute and these Rules and such additional information the Court may require or the Guardian ad litem deems necessary. Reports are to be brief and to the point unless the complexities of the case require greater detail. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 39.11. Setting Hearings

a. The secretary to the Judge will designate available hearing dates for all matters that will require more than twenty (20) minutes. The Clerk may set matters that are reasonably expected to require no more than twenty (20) minutes on the regular court docket.

b. All matters may be set by agreement of counsel, subject to confirmation by the Judge's secretary for matters anticipated to require more than twenty (20) minutes or by the Clerk if the matter is not expected to exceed twenty (20) minutes.

c. Notice of the date and time the hearing is set shall be given to all Interested Parties by the attorney who applied for the setting of a hearing. If the hearing is reasonably expected to take more than twenty (20) minutes, the Order shall state the time required for the hearing.

d. If all Interested Parties agree, a matter presently set for hearing may be continued. Notice of such continuance and the new hearing date shall be promptly provided to all Interested Parties by the attorney who requested the continuance. If all Interested Parties do not agree to the requested continuance, the Court will endeavor to conduct a telephone conference with all Interested Parties to discuss the requested continuance.

e. For good cause shown, the Court may hear any matter, including but not limited to the above matters, without a special setting. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.12. Petitions for Elective Share, Year’s Support, Homestead, and Exempt Property

a. Notice and Initiation of Petition. Notice shall be given to the personal representative of the estate, the attorney of record, and all interested parties (including creditors if the estate may be insolvent) that the surviving spouse intends to assert a claim for an Elective Share, Year’s Support, Homestead, and/or Exempt Property. If the personal representative is the surviving spouse, an administrator may be appointed.

b. Prerequisites for Final Hearing. In all claims for Elective Share, Year’s Support, Homestead, and/or Exempt Property, each party shall be and is required to submit to the court and to the opposing party (and all interested parties) no later than 72 hours prior to the final hearing an estimate of the value of the net estate and a written proposal reflecting the amount and percentage for an Elective Share, the amount for Year’s Support, the amount of Homestead, and the amount of Exempt Property which the surviving spouse should be awarded. This proposal shall contain stipulations by the parties, if any, as to the values attributable to assets to be considered in computing the Elective Share, Year’s Support, Homestead or Exempt Property. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.13. Motions

Motions will be heard by the court at 10:00 a.m. on Fridays, excluding holidays, and such other days as designated by the Court. Motions must be in writing and shall conform to the requirements of Local Rule 26. Parties represented by counsel shall provide written responses as required by Local Rule 26, otherwise they may not be permitted to oppose the motion. Nevertheless, Local Rule 26.04(f), which provides that motions shall automatically be granted if a written response is not timely filed, shall not apply in matters involving conservatorships, guardianships, fee requests, encroachments upon assets of an estate and other matters for which discretionary review by the Court is appropriate. With the exception of fee requests which are controlled by Rule 39.14(b), in all matters which require the discretionary approval of the Court, the movant should be prepared to present the motion with the anticipation the Court will have questions concerning the matter(s) at issue. Unless permission is obtained from the Court, no witness shall testify during the Friday Motion Docket. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 39.14. Fees of Fiduciaries and Attorneys**a. Court Approval of Fees:****1. Decedent's Estates.**

In a decedent's estate, and with the exception of instances wherein all residuary beneficiaries of a solvent decedent's estate are competent adults and expressly consent in writing to the specific fee stated in the consent (see Local Rule 39.14 (e)) and applications for fees immediately following a hearing in which the Court expressly instructed the applicant(s) to file an application for fees without the necessity of a motion and further hearing (see Local Rule 39.14 (c)), any request for a fee shall be presented by Motion, supported by affidavits and if applicable billing statements and receipts, with appropriate service of all such documents upon Interested Parties.

2. Conservatorships and Guardianships.

In conservatorships and guardianships only, any person or party, whether the conservator, guardian, attorney, petitioner, guardian ad litem or whom-ever, requesting that fees or expenses be charged against or paid by the respondent, ward or their estate, shall obtain approval of the Court prior to payment or receipt of such fee. Any person who pays any such fee out of the funds of a minor, incompetent, respondent or ward in a conservatorship or guardianship without express Court approval may be personally liable for the funds advanced and reasonable and necessary costs, fees and expenses resulting from such unauthorized disbursement.

b. When Motion Is Required. In those matters for which a motion is required, motions for fees, expenses and/or costs to be charged against a ward's or decedent's estate or against an adverse party shall be filed, served and docketed according to Local Rule 26 and 39.13, provided however, such motions shall not be deemed granted merely because a written response is not filed. The Court has the responsibility to determine whether such fees are reasonable and necessary whether or not a response is filed. If a written response is timely filed, a hearing on the motion shall be conducted. If no response is filed, neither the person applying for a fee nor their attorney need appear in Court to present the motion. The Court will review the motion and affidavit(s) supporting the fee request and act upon the fee request without a hearing. After reviewing the motion and affidavit(s), if the Court desires a hearing or additional information, the Court shall notify the applicant of the necessity of a hearing or additional information. Notice of the hearing shall expressly provide in bold:

THIS MOTION IS EXPECTED TO BE HEARD AT 10:00 A.M. ON FRIDAY ___, 20___ IN COURTROOM 608; HOWEVER, IF A WRITTEN RESPONSE IS NOT FILED BY 11:59 p.m. CST ON THE MONDAY PRECEDING THE HEARING DATE, THE COURT WILL REVIEW THE FEE REQUEST WITHOUT THE NECESSITY OF A HEARING.

c. When Motion is Not Required — "Fee Application". On certain occasions (with the prior direction from the Court), fees and expenses may be applied for without the necessity of filing a motion and docketing the matter for a hearing; nevertheless, in all such situations copies of the fee request and all documents attached thereto shall be served upon all Interested Parties even though no hearing is to be scheduled. Specifically, at the conclusion of hearings in which the Court approves a petition to create a conservatorship, guardian-

ship and in certain other instances expressly directed by the Court, the Court may direct the person and parties who wish to be reimbursed their expenses and paid their reasonable and necessary fees incurred to date, to file a “Fee Application” in lieu of a motion. The Fee Application shall be served upon Interested Parties, along with the supporting documents, with the notice that the Court shall review and act upon the Fee Application without the necessity of a hearing. Unless one is expressly directed by the Court to file a Fee Application in lieu of a motion, all fee and expense requests should be presented by motion pursuant to Local Rule 26 with appropriate notice of a proposed hearing date.

d. **Form of Motion and Fee Application.** Fee requests shall be set forth in a manner similar to the applicable form(s) recommended by the Court, which may be obtained from the Clerk. The Motion or Fee Application shall state the fee requested, hours worked, hourly rate charged, and total of expenses requested, if any, along with such other facts as may be necessary to support the fees and/or expenses requested. The Motion or Fee Application shall be supported by appropriate affidavits, receipts, if applicable, and billing statement. All billing statements or affidavits shall itemize a brief description of the services rendered, the time expended and date of service, respectively. The person requesting a fee has the burden of proof to establish the reasonableness and necessity of the fee and why such fee and related expenses should be charged against a decedent’s estate or a ward of a conservatorship or guardianship.

e. **Written Consent To Fees and Expenses — (Decedent’s Estates Only).** Court approval shall not be required if all residuary beneficiaries of a solvent decedent’s estate are competent adults and consent to the specific fee stated in the consent. However, if Court approval is requested, a motion need not be filed or docketed for hearing provided that all residuary beneficiaries of a solvent decedent’s estate are competent adults or entities and expressly consent in writing to the specific fee stated in the consent; nevertheless, a Fee Application should be presented in the fashion stated in the preceding subsections. The written consents must be supported by an appropriate affidavit that expressly states: **All residuary beneficiaries are competent adults or entities and have expressly consented to the specific fee requested, the estate is solvent, and the approval of fees being and to be requested shall not result in an insolvent estate or the inability to pay any valid claims of creditors. The foregoing procedure shall not be available if the estate is insolvent (or is reasonably likely to become insolvent) or if any residuary beneficiary is a minor or incompetent.**

f. **Fee Requests in Conservatorships and Guardianships.**

1. **Initial Request for Fees:**

Any person or party desiring to have their fees or expenses paid by the respondent/ward shall inform the Court of such request at the hearing wherein the Court either creates or dismisses a conservatorship or guardianship. The Court shall afford sufficient time to present affidavits and billing statements and may direct that such fee requests be presented by Motion pursuant to Local Rule 39.14(b) or Fee Application pursuant to Local Rule 39.14(c).

2. **Interim Request for Fees:**

When a conservatorship or guardianship is in existence and an interim request for fees is made, such requests shall be presented to the Court by

Davidson County

Motion with service on Interested Parties pursuant to Local Rule 26. Unless good cause is shown to justify otherwise, interim fee requests shall be presented annually following approval of the annual accounting or, if accountings are waived, on the anniversary date of the creation [of] the conservatorship or guardianship estate.

3. Final Fee Requests: If a conservatorship or guardianship estate is to be closed, whether the minor has attained majority, the ward is deceased or his/her competency has been restored, all persons or parties desiring to have their fees or expenses paid by the respondent/ward or charged against an adverse party shall file a Motion pursuant to Local Rule 39.14 (b) prior to the closing of the estate. Fees and expenses are to be determined and set forth in an order prior to or concurrent with the order closing the estate. Fee Applications and Motions to Set Fees filed after the closing of a conservatorship or guardianship may be barred unless good cause is shown.

g. Fee Requests in Decedent's Estates.

1. Interim Fee Requests:

Interim requests for fees shall be presented to the Court by Motion with service on Interested Parties pursuant to Local Rule 26. Unless good cause is shown to justify otherwise, requests by the personal representative(s) or their legal counsel for fees or expenses in decedent's estates shall be presented annually following approval of the most recent annual accounting, or if accountings are waived, at such time as an annual accounting would have been made if accountings had not been waived.

2. Final Fee Requests.

All persons or parties desiring to have their fees or expenses paid by or charged against the estate shall file a Motion pursuant to Local Rule 39.14 (b) prior to the closing of the estate. All claims for fees and expenses are to be determined and set forth in an order prior to or concurrent with the order closing the estate. Motions to Set Fees filed after the closing of a decedent's estate may be barred unless good cause is shown.

h. Notice to Interested Parties. All Interested Parties shall receive a copy of any Fee Application and attachments thereto, and in the case of a Motion, shall also receive Notice of the date and time of the proposed hearing and a copy of the motion and attachments. (Added by order filed November 5, 2007, effective November 5, 2007; amended effective July 1, 2019.)

§ 39.15. Accountings and Closing of Estates:

a. Fiduciaries shall file an initial inventory and thereafter make annual accountings with the Probate Court Clerk until the estate is fully administered and closed. For good cause shown, the Court may extend or shorten the time for filing interim or final accountings. Accountings may be waived by the Court for good cause shown. Furthermore, in decedent's estates accountings may be waived if the decedent's will waives the requirement for the personal representative to make court accountings of the estate, or if all residuary beneficiaries have in writing excused the personal representative from filing all court accountings. The filing of an inventory may be waived in a like manner.

b. Copies of all accountings, interim or final, are to be furnished to all Interested Parties by the personal representative or their attorney of record.

c. Detailed accountings of solvent estates may be waived and the estate closed on receipt and waiver provided all residuary distributees are *sui juris* and acknowledge in writing that the estate has been properly distributed to them, that they file the statement in lieu of a more detailed accounting, and provided further that the personal representative, after the period for creditors to file claims against the estate has expired, files the required petition or statement with the Probate Court Clerk. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.16. Orders and Decrees

In addition to other provisions of Local Rule 33 which apply to Probate Court:

a. Orders which waive bond, inventory or accountings shall expressly set forth the grounds for such waiver.

b. If the basis of a ruling is set forth in an order, such shall be correctly stated and without recitation to matters which did not occur or findings which were not made by the Court.

c. All Orders shall state the date the matter was heard (or docketed for hearing) and be presented to the Court within seven (7) days thereafter unless additional time is expressly granted by the Court. (Added by order filed November 5, 2007, effective November 5, 2007.)

§ 39.17. Instructing Clerk to Invest Funds

The Probate Court Clerk shall invest funds in interest bearing accounts only when there is a specific Order directing it to do so. Such orders should suggest the period of time the funds should be invested. All such orders must contain the full legal name, address and social security number of the person(s) whose funds are being invested. In guardianships, the date of birth and the date the minor shall become eighteen (18) years of age shall be stated in the order. (Added by order filed November 5, 2007, effective November 5, 2007.)

APPENDIX OF FORMS

Default Judgment Certificate

Plaintiff, by counsel certifies that:

1. No papers have been served on plaintiff's counsel by the defendant(s) in default.

2. Defendant(s) were served on _____

3. The amount due is as follows:

(a) Total amount of the original obligation \$ _____

(b) Amount paid by defendant(s) to be deducted from the original obligation is \$ _____

(c) Amount of any interest requested \$ _____

(d) Amount of attorney fees requested \$ _____

(e) Balance due is \$ _____

(f) If the balance due above is different from the amount sought in the default judgment, the reason is:

(g) If the basis of the claim is a promissory note, contract, or account, the original or a copy has been filed. If not, please attach, or explain the absence.

(h) If attorney fees are requested state the basis for the fee obligation and attach documentation if not already in record.

(i) If attorney fees are requested, attach attorney affidavit specific enough to allow the judge or chancellor to set the fee in compliance with RPC 1.5(a).

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY,
TENNESSEE

vs

)
)
)

NO.

CERTIFICATE OF READINESS FOR TRIAL
FOR CONTESTED DIVORCE CASES

The undersigned hereby certify that:

1. THE CASE IS AT ISSUE;
2. THAT THE GROUNDS FOR DIVORCE HAVE BEEN ASCERTAINED
INsofar AS THEY CAN BE;
3. THAT ALL NECESSARY, OR DESIRED DISCOVERY HAS BEEN
TAKEN; THAT ALL EXHIBITS PROMISED AT DEPOSITIONS HAVE BEEN
DELIVERED;
4. THAT THE PARTY HAS HAD REASONABLE TIME TO BE READY
FOR TRIAL;
5. THAT ALL WITNESSES HAVE BEEN LOCATED, INsofar AS
DEEMED POSSIBLE;
6. THAT THE CASE IS READY FOR TRIAL IN ALL RESPECTS AND
WILL REQUIRE APPROXIMATELY FOR TRIAL;
7. THAT A LIST OF ASSETS INCLUDING MARITAL PROPERTY, SEPA-
RATE PROPERTY AND INHERITED PROPERTY, AND A PROPOSED DIVI-
SION, HAS BEEN FILED WITH THE COURT OR WILL BE FILED BY
COURT DATE;
8. THAT AN EXPENSE SHEET WILL BE FILED LISTING ALL EX-
PENSES AND INCOME.
9. IF APPLICABLE, BOTH PARTIES CERTIFY THEY WILL PRESENT
AS EVIDENCE AT THE HEARING IN THIS CAUSE ANY AND ALL INFOR-
MATION PERTAINING TO HEALTH INSURANCE CONVERSION UNDER
THE COBRA LAW WHICH MAY BE APPLICABLE TO EITHER PARTY TO
ENSURE CONTINUOUS INSURANCE COVERAGE.
THEREFORE, ALL COUNSEL REQUESTS THAT THE CAUSE BE PLACED
ON THE TRIAL DOCKET.

Attorney for Plaintiff

Date:

Attorney for Defendant

Date:

I HEREBY CERTIFY THAT A COPY OF THIS CERTIFICATE HAS BEEN
FILED WITH THE CLERK AND MAILED TO

NOTE: IN THE EVENT BOTH ATTORNEYS DO NOT SIGN OR ONE
DISAGREES TO FILING, THE ATTORNEY SEEKING A COURT DATE
SHALL FILE A MOTION ASKING THE COURT TO ENTER A CERTIFICATE
OF READINESS AND SET THE CASE. THE MOTION SHOULD STATE
THAT THE CASE IS AT ISSUE AND ADVERSE COUNSEL REFUSES TO
SIGN THE CERTIFICATE OF READINESS.

Davidson County

(SAMPLE)
RULE 24. AGREEMENT

In consideration of saving the time and expense of a complete court proceeding, the parties and their counsel agree to a summary procedure, pursuant to Rule 24 of the Local Rules of Practice for Courts of Record of Davidson County, Tennessee, as follows:

- 1. The proceeding will be held before Judge _____ without a jury.
- 2. The parties will voluntarily furnish whatever items are requested that would be subject to discovery under the law to each other.
- 3. The parties will appear with their attorneys at the date and time set by order of the Court.
- 4. The plaintiff's attorney will present his or her evidence on the issues to be tried and argue the plaintiff's right of recovery.
- 5. The defendant's attorney will then present his or her evidence followed by rebuttal by the plaintiff. Oral argument shall be allowed.
- 6. The Judge shall then deliberate and render a decision.
- 7. This decision will be final and an enforceable judgment will be entered.
- 8. The parties have agreed that the plaintiff's recovery shall be between \$_____ as a low and \$_____ as a high. The plaintiff's recovery shall be the stated low amount if the decision rendered is below that amount and the plaintiff's recovery shall be the stated high amount if the decision rendered is above that amount.

Otherwise, the plaintiff will receive whatever decision is rendered between the high and the low.

- 9. There shall be no appeal of the decision from the Trial Court unless the parties specifically agree to reserve this right.
- 10. The Court costs in this case shall be paid 50% by the Plaintiff and 50% by the Defendant unless otherwise agreed to by the parties.

This the _____ day of _____, 20_____.

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

LOCAL RULES OF PRACTICE, DAVIDSON COUNTY METROPOLITAN GENERAL SESSIONS COURT CIVIL RULES

ADOPTED EFFECTIVE AUGUST 20, 2018

- | | |
|---|--|
| <p>RULE.</p> <p>1. APPLICABILITY AND SUSPENSION OF RULES</p> <p>1.01. Former Rules Void</p> <p>1.02. Applicability</p> <p>1.03. Suspension of Rules</p> <p>1.04. Appropriate Attire Required for Court — The New Adopted Dress Code</p> <p>2. APPEARANCE OF COUNSEL</p> <p>2.01. Counsel of Record; Entry of Appearance</p> <p>2.02. Withdrawal of Counsel</p> <p>2.03. Conduct of Counsel</p> <p>3. FILING AND SERVICE OF PAPERS</p> <p>3.01. Filing with the Clerk .</p> <p>3.02. Filing Companion or Third-Party Civil Cases</p> <p>3.03. Filing of Briefs or Memorandum of Law</p> <p>4. TRIAL CALENDAR</p> <p>4.01. Docket Calls</p> <p>5. SETTING CASES</p> <p>5.01. Setting of Cases</p> | <p>RULE.</p> <p>6. CONTINUANCES</p> <p>6.01. Continuances</p> <p>7. NONSUITS</p> <p>7.01. Nonsuits</p> <p>8. DISMISSALS</p> <p>8.01. Slow Pay Motions</p> <p>9. NEGOTIATIONS AND SETTLEMENTS</p> <p>9.01. Settlement Discussions</p> <p>9.02. Judgments</p> <p>9.03. Minor Settlements</p> <p>9.04. Agreed Orders</p> <p>10. DOCKET INFORMATION</p> <p>10.01. Civil Dockets</p> <p>11. LANGUAGE INTERPRETERS</p> <p>11.01. Language Interpreters</p> <p>11.02. Hearing/Sign Interpreters</p> <p>12. ORDERS OF PROTECTION</p> <p>12.01. Petitions for Orders of Protection</p> <p>13. NO SMOKING POLICY</p> <p>13.01. No Smoking Policy</p> <p>14. VIDEO EQUIPMENT GUIDELINES [Deleted]</p> <p>14.01. [Deleted]</p> |
|---|--|

Compiler's Notes. These rules, effective August 20, 2018, replace former rules effective October 15, 2009.

RULE 1. APPLICABILITY AND SUSPENSION OF RULES

Sec. 1.01. Former Rules Void

All former rules of local practice except as readopted herein are void.

Sec. 1.02. Applicability

Each rule is applicable in all General Sessions Court proceedings in Davidson County, Tennessee. Each rule is applicable in all types of cases unless otherwise indicated by a particular rule.

Sec. 1.03. Suspension of Rules

Whenever the Court determines that justice requires it, the Court may suspend any of these rules.

Sec. 1.04. Appropriate Attire Required for Court — The New Adopted Dress Code

(a) All parties that appear before court, including but not limited to attorneys, litigants and witnesses, shall dress professionally for Court. Please DO NOT enter the Courtroom wearing a halter top, T-top, see-through top, shorts, exposed midriff, exposed underwear, hats, sagging pants, low-riding pants, shirts with inappropriate language, torn clothing, mini-skirts, flip flops, other inappropriate clothing and un-tucked shirts or blouses. Exceptions to the following dress code may be allowed for religious attire only.

RULE 2. APPEARANCE OF COUNSEL**Sec. 2.01. Counsel of Record; Entry of Appearance**

Counsel must be licensed in the state of Tennessee in order to practice law or represent others in the General Sessions Courts. A non-licensed person will not be permitted to represent anyone other than him or herself in the General Sessions Courts.

All counsel who have entered an appearance in a case will be recorded as Counsel of record. Counsel shall enter an appearance at the earliest practicable time by notifying opposing counsel and the Civil Court Clerk's office.

Sec. 2.02. Withdrawal of Counsel

Prior to entry of a judgment or disposition in General Sessions Court, no attorney shall be allowed to withdraw except for good cause and by Leave of Court upon motion after notice, in writing, to his/her client and opposing Counsel or party if without Counsel.

Sec. 2.03. Conduct of Counsel

During trial, Counsel shall not exhibit familiarity with witnesses or opposing Counsel and shall not use first names of adults. Counsel, parties and witnesses shall be expected to conduct themselves with appropriate decorum at all times in the Courtroom.

When addressing the Court, counsel shall introduce herself/himself to the court.

Counsel shall stand while examining witnesses, addressing the Court, or making objections.

Counsel who anticipate being late for Court shall promptly notify the Clerk of the Court or anyone designated by the Judge and the opposing Counselor pro-se party.

RULE 3. FILING AND SERVICE OF PAPERS**Sec. 3.01. Filing with the Clerk**

In addition to traditional paper submission and filing with the Clerk, in accordance with Tennessee Code Annotated, Title 16, Chapter 15, Part 7, electronic filing is adopted for the General Sessions Courts of Davidson County Tennessee. The Electronic Filing Rules and effective date set forth by each Clerk's Office govern the electronic filing of cases, pleadings and other papers.

There will be no statute of limitations/filing deadline extensions or exceptions made when the electronic filing system is down or inoperable.

Any day on which the office of the court clerk is closed or on which weather or other conditions have made the office of the court clerk inaccessible, the period of time for filing a paper in court shall run until the end of the next business day.

E-Filing through the eFlex system may not be used to file appeals in any action. All appeals must be filed timely and in paper form with the Circuit Court Clerk’s Office.

When confidential information is not required by law to be filed, the filer should redact or leave out the information prior to filing the document(s). Items designated by the Tennessee Code Annotated as Confidential Information not open for public inspection are as follows:

- Social Security Numbers
- Taxpayer IDs
- Employer and Taxpayer Account Numbers/PINs/Info
- Credit/Debit Card Account Numbers/PIN/Authorization Numbers
- Passport/Alien Registration Numbers
- Biometric Data
- Electronic Identification Numbers/Routing Codes
- Driver License Numbers
- VINs

Sec. 3.02. Filing Companion or Third-Party Civil Cases

Upon the filing of any civil action, which is, related to a pending action in General Sessions Court (e.g., Cross Warrant to Third Party Complaint), the party filing such companion case shall note the new warrant is a companion case to a pending General Sessions Court case. All companion or third-party cases shall be consolidated for trial with the original action.

Sec. 3.03. Filing of Briefs or Memorandum of Law

All Post-Hearing Briefs or Memoranda of Law shall be filed with the Civil Court Clerk of the Court, and a copy shall be delivered to the Judge in open Court or in the General Sessions office in the A. A. Birch Building to the Judge before whom the case is pending and a copy contemporaneously mailed to the opposing Counsel of party, or to the pro-se party.

RULE 4. TRIAL CALENDAR

Sec. 4.01. Docket Calls

At the first call of the civil docket, in the absence of the trial Judge, the Courtroom Deputy is authorized to call the docket to determine which parties are present and ready for trial. All cases requiring entry of a default judgment, a dismissal for nonappearance of a party, or resolution of a disputed matter including a request for a continuance where the opposing party objects such request, shall be reserved for action by the trial Judge. At the conclusion of the docket call, Courtroom Deputy shall announce a recess and advise those present in the Courtroom of the opportunity to discuss settlement with the

opposing party or Counsel; the Courtroom Deputy shall further advise those present that they are not required to settle their case and they will be given a trial if they are unable to agree on a settlement.

When a case is dismissed without a trial for want of prosecution, said dismissal shall be without prejudice to either party's right to re-file.

RULE 5. SETTING CASES

Sec. 5.01. Setting of Cases

Cases shall be tried on the date they are set on the Court's docket unless, for good cause shown or upon agreement of the parties, the Court resets case for trial at a later date or continues case indefinitely. In civil actions the Court may liberally grant a continuance on the first setting of a case or on the first setting after an indefinite continuance.

RULE 6. CONTINUANCES

Sec. 6.01. Continuances

Continuances will only be granted to a date certain. There will be no "indefinite" continuances. All cases MUST be disposed of within one (1) year of the date of the first setting of a case unless good cause is shown to the Court.

RULE 7. NONSUITS

Sec. 7.01. Nonsuits

When a defendant satisfies a civil judgment prior to the Court date by paying the monies to the Civil Court Clerk's office and the plaintiff's attorney takes a Non-Suit, the plaintiff's attorney shall prepare an Order entering formal written notice of Non-Suit and requesting disbursement of funds.

RULE 8. DISMISSALS

Sec. 8.01. Slow Pay Motions

When the moving party on a Slow Pay Motion fails to answer at the first call of the docket, such Motion shall be subject to dismissal at the expiration of 20 minutes after the commencement of the docket call.

RULE 9. NEGOTIATIONS AND SETTLEMENTS

Sec. 9.01. Settlement Discussions

At the end of the first docket call, all parties and attorneys shall be allowed a brief opportunity to discuss possible settlement of their cases before trial. The Court shall advise those present in the Courtroom of the opportunity to discuss settlement with the opposing pro-se party or the opposing Counsel. The Court shall also advise those present a trial will be given to them if the parties or Counsel are not able to agree on a settlement and they are not required to settle their cases. Prior to trial all parties must exchange exhibits and prepare copies for the opposing party and the court.

Sec. 9.02. Judgments

All judgments which contain more than a single element must list damages and attorney's fee separately before the total.

All parties or their attorneys shall sign all Agreed Orders or Judgments which are presented to the Court or the party presenting the Order or Judgments shall sign the Judgments, thereby certifying that the opposing party has been notified of the entry of the Agreed Order or judgment, its terms and the date of entry.

All judgments on Orders prepared by Attorneys/parties subsequent to hearing shall be returned to trial Judge for signature within five (5) working days.

Sec. 9.03. Minor Settlements

In all cases where the parties propose to settle a personal injury claim brought on behalf of a minor, the Court shall conduct a hearing to chambers at which the minor and his/her guardian are present. At such hearing, Plaintiff's Counsel shall provide the Court with documentation reflecting the medical expenses incurred in connection with the claim, and describing the minor's present medical condition.

Sec. 9.04. Agreed Orders

Agreed judgments must be signed by both parties and/or their attorneys.

RULE 10. DOCKET INFORMATION**Sec. 10.01. Civil Dockets**

Civil Dockets are currently heard in the Justice A. A. Birch Building on Monday through Friday, at 9:00 a.m. in Courtroom 5D on the 5th Floor and at 10:00 a.m. in Courtroom 1B on the 1st Floor.

RULE 11. LANGUAGE INTERPRETERS**Sec. 11.01. Language Interpreters**

Pursuant to Supreme Court Rule 42, the appointing of a language interpreter is a matter of judicial discretion. If the Court determines that justice requires that an interpreter shall be appointed, said appointment and scheduling of the interpreter shall be coordinated with the General Sessions Court Administration Office. Notwithstanding Rule 42, it is the policy of the General Sessions Court judges to schedule a language interpreter before any court appearance in the interest of allowing limited English proficient persons to exercise their legal rights, and to secure meaningful access to the judicial system. Please contact the General Sessions Court Administration Office to secure a language interpreter for court appearances in a timely manner. Pursuant to Supreme Court Rule 42 section 7(a), the Tennessee Administrative Office of Court compensates foreign language interpreters who provide services in a civil case as follows: any hearing, trial, or other appearance before any juvenile, probate, circuit, chancery, criminal or appellate court, in any action, appeal or other proceeding, including any matter conducted by a judicial magistrate.

Sec. 11.02. Hearing/Sign Interpreters

Sign interpreters are provided for civil proceedings at the Court's expense but notification is to be given to the General Sessions Court Administration Office as soon as the need is determined. Cases involving an interpreter will be heard at the beginning of the docket provided the interpreter is prepared for trial.

RULE 12. ORDERS OF PROTECTION**Sec. 12.01. Petitions for Orders of Protection**

Petitions for *Ex Parte* Orders of Protection are to be filed with the Judicial Commissioner in Night Court who shall issue the *Ex Parte* Order if the allegations meet statutory requirements. All applications shall be sent to the General Sessions Civil Clerk's office for service of process and setting for a hearing.

RULE 13. NO SMOKING POLICY**Sec. 13.01. No Smoking Policy**

Pursuant to Metropolitan Ordinance No. 094-1035 and Public Chapter 410 of 2007 effective October 1, 2007, smoking is prohibited in public buildings.

RULE 14. VIDEO EQUIPMENT GUIDELINES [Deleted]**Sec. 14.01. [Deleted]**

LOCAL RULES OF PRACTICE, DAVIDSON COUNTY METROPOLITAN GENERAL SESSIONS COURT CRIMINAL RULES

EFFECTIVE OCTOBER 15, 2009

RULE.

1. APPLICABILITY AND SUSPENSION OF RULES

- 1.01. Former Rules Void
- 1.02. Applicability
- 1.03. Suspension of Rules
- 1.04. Appropriate Attire Required for Court

2. APPEARANCE OF COUNSEL

- 2.01. Counsel of Record and Entry of Appearance
- 2.02. Withdrawal of Counsel
- 2.03. Conduct of Counsel

3. TRIAL CALENDAR (RESERVED)

4. SETTING CASES

- 4.01. Setting of Cases

5. CONTINUANCES

- 5.01. Continuances

6. SET-ASIDE ORDERS

- 6.01. Criminal Set-Aside Orders
- 6.02. Request For a Second Set Aside Order

7. (RESERVED)

8. RETIRED CASES

- 8.01. Retired Cases

9. EXPUNGEMENT ORDERS

- 9.01. Expungement of Dismissed Criminal Cases
- 9.02. Expungement of Retired Cases

RULE.

- 9.03. Expungement of Cases Pursuant to T.C.A. § 40-35-313

10. PETITION TO SUSPEND OR MODIFY

- 10.01. Scheduled Petition to Suspend or Modify

11. PLEA AGREEMENTS

- 11.01. Plea Agreements — Criminal Bond Dockets

12. BAIL

- 12.01. Detention without Permitting Bond
- 12.02. Duration of Capias
- 12.03. Surrender by Bond Companies
- 12.03. Policy for Arrest Warrant (RESERVED)
- 12.04. Information Intake Sheets

13. INTERPRETERS

- 13.01. Language Interpreters
- 13.02. Hearing Impaired Interpreters
- 13.03. Hearing Impaired Persons Brought into Night Court

14. NO-SMOKING POLICY

- 14.01. General Policy

15. FORFEITURE/PROPERTY SEIZURE WARRANTS

- 15.01. Policy

16. RESTRICTED DRIVER'S LICENSE

17. VIDEO EQUIPMENT GUIDELINES

- Set-Aside Order
- Order of Continuance

Compiler's Notes. These rules, effective October 15, 2009, replace former rules effective November 1, 1998.

RULE 1. APPLICABILITY AND SUSPENSION OF RULES

Sec. 1.01. Former Rules Void

All former rules of local practice, except as readopted herein, are void.

Sec. 1.02. Applicability

Each rule is applicable in all General Sessions Court proceedings in Davidson County, Tennessee. Each rule is applicable in all types of cases unless otherwise indicated by a particular rule.

Sec. 1.03. Suspension of Rules

Whenever the Court determines that justice requires it, the Court may suspend any of these rules.

Sec. 1.04. Appropriate Attire Required for Court

All parties, including Counsel and witnesses, shall dress appropriately for Court.

Please do not enter the Courtroom wearing a halter, t-strap tops, or see through tops and blouses, shorts, no exposed midriff, no underwear exposed, hats, sagging or low riding pants, torn clothing, shirts with inappropriate language, untucked shirts and blouses, mini-skirts, or any other inappropriate clothing or shoes.

RULE 2. APPEARANCE OF COUNSEL**Sec. 2.01. Counsel of Record and Entry of Appearance**

Counsel must be licensed in the State of Tennessee in order to practice law or represent others. An unlicensed person will not be permitted to represent another party in the General Sessions Courts of Davidson County.

Whenever a Defendant in a criminal case is determined by the Court to be indigent and/or a conflict with the Public Defender representing the co-defendant(s) is determined, an Order shall be signed by the Judge appointing Counsel and setting forth the indigency finding and identifying the appointed Counsel. Appointed Counsel shall continue to represent the Defendant by Order of the Court of competent jurisdiction.

All Counsel who have entered an appearance in a case shall be noted as Counsel of record. Counsel shall enter a written appearance at the earliest practicable time by notifying opposing Counsel and the Criminal Court Clerk's office. A Motion for a Set Aside Order shall be considered an appearance by the attorney filing said filing of a Motion.

Before any attorney who has been licensed less than two (2) years shall be eligible to accept appointments in criminal cases in the Davidson County General Sessions Court, he or she shall attend a training seminar sponsored by the Court.

Any attorney who accepts an appointment in the Davidson County General Sessions Court in a criminal case, where the defendant is incarcerated, shall continue to represent that client during the period of time between bind over and arraignment in Criminal Court.

Sec. 2.02. Withdrawal of Counsel

No attorney may be allowed to withdraw except for good cause and by leave of Court upon motion after notice to the defendant and to the Office of the District Attorney General.

Sec. 2.03. Conduct of Counsel

During trial, Counsel shall not exhibit familiarity with witnesses or opposing Counsel and shall not use first names of adults. Counsel, parties and witnesses shall be expected to conduct themselves with appropriate decorum at all times in the Courtroom.

When addressing the Court, Counsel shall introduce herself/himself to the Court.

Counsel shall stand while examining witnesses, addressing the Court, or making objections.

Counsel who anticipate being late for Court shall promptly notify the Clerk of the Court or any other person designated by each Division.

Counsel shall not announce being ready for trial unless the defendant is present or, in the case of the Assistant District Attorney, he/she is assured of the immediate availability of the prosecution's witnesses.

RULE 3. TRIAL CALENDAR (RESERVED)

RULE 4. SETTING CASES

Sec. 4.01. Setting of Cases

Cases shall be tried on the date they are set on the Court's docket, unless, for a good cause shown or upon agreement of the parties, the Court resets them for trial at a later date or continues them to a specific date.

RULE 5. CONTINUANCES

Sec. 5.01. Continuances

An Order of Continuance must be filed in the Clerk's office no later than five (5) business days prior to the Court date. Said Orders may be obtained in the Criminal Court Clerk's office and signed by the Judge who presides over the division where the case originated. The originating special or substitute Judges shall not sign an Order of Continuance. If the Judge is not available, the Presiding Judge shall address the issue. No continuances are to be requested by e-mail communications, (except for probation officers with the permission of their supervising Judge). Continued cases will be reset on the originating Judge's docket. Cases may only be transferred to another division with the permission of both Judges.

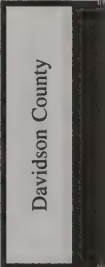
RULE 6. SET-ASIDE ORDERS

Sec. 6.01. Criminal Set-Aside Orders

An Order to Set Aside may be obtained in the office of the Criminal Court Clerk at the A.A. Birch Building. Said Orders may be obtained in the Criminal Court Clerk's office and must be signed by the Judge who presides over the division where the case originated. If the originating Judge is not available, the Presiding Judge shall address the issue. Substitute Judges shall not sign an Order to Set Aside. The requesting party must submit a copy of the Order to set Aside to the front of the Criminal Court Clerk's file cover along with the Set Aside Order. Cases are to be reset on a trial docket appropriate to the offense.

An executed Order to Set Aside shall be filed with the Clerk's office by the party seeking the Order.

The Order to Set Aside shall be signed by the attorney or by the defendant, if the defendant is pro se, requesting the Order with the reset date, and a copy shall be delivered to the Office of the District Attorney.



Any attorney requesting an Order to Set Aside shall become attorney of record and recorded on the warrant accordingly.

An Order to Set Aside may be obtained in the Criminal Court Clerk's office. Any Judge may agree to sign same if the following conditions are met and if the defendant has no previous charge for failure to appear on the referenced warrant:

1. If defendant has been released on his/her own recognizance (ROR) or a self-insured bond, a bond must be made; or
2. If a defendant has been released on Pretrial Release, a Pretrial Release officer must verify in person, by telephone, facsimile, or e-mail that Pretrial Release will stay on the bond; or
3. If a defendant posted a bond through a bonding company, a written statement from the bonding company certifying they will remain on the bond pursuant to the original bond agreement with the defendant must be present with the referenced warrant at the time the Order to Set aside is requested; this statement may be transmitted to the Court via a facsimile transmission to the Clerk's office.

An Order to Set Aside will be granted absent the above conditions, provided the defendant can furnish the following proof:

1. Statement from a licensed medical doctor giving the nature of the illness at the time of the defendant's arraignment or Court date; or
2. Obituary listing the next of kin; or
3. Proof of being incarcerated at the time of arraignment or court date, acceptable proof to include e-mail, telephone, or any other electronic communication from the facility verifying the incarceration.

Sec. 6.02. Request For a Second Set Aside Order

Anyone requesting a Judge sign a second criminal Order to Set Aside for a person who has forfeited the initial criminal Order to Set Aside must return to the General Sessions Court Judge who originally signed the first Order to Set Aside. Said Judge is the only person authorized to sign same.

The requesting party must attach a copy of the front of the Criminal Court Clerk's file and a copy of the affidavit. Further, if any attorney is requesting said Order to Set Aside, a copy of same shall be delivered to the bondsman (if applicable) and to the Office of the District Attorney General. If a bondsman is requesting said Order to Set Aside, it needs to be signed by the judge pursuant to this rule. Once filed with the Clerk, copy of same shall be delivered by the bondman to the attorney of record (if applicable) and to the Office of the District Attorney General.

Cases are to be reset on a trial docket appropriate to the offense.

If a bondsman is requesting said Order to Set Aside, a copy of same shall be delivered to the attorney of record (if applicable) and to the Office of the District Attorney General. Cases are to be reset on a trial docket appropriate to the offense.

RULE 7. (RESERVED)

RULE 8. RETIRED CASES

Sec. 8.01. Retired Cases

If the office of the District Attorney files a Motion to Reinstate the prosecution of a retired case, a copy of such Motion shall be sent to both the defendant and any defense attorney of record giving a ten (10) day notice of the hearing of such Motion. The copy of the Motion sent to the defendant shall be sent by certified mail, return receipt requested to the last known address.

Upon a case being placed on retired status, Counsel of record for the Defendant may move to be relieved as Counsel of record for any further proceedings.

Upon motion of the defendant, or upon a retired case coming on for a scheduled review, a criminal case which has been retired or inactive for a period of one (1) year shall be dismissed by the Judge of the Court in which the case was retired or placed on inactive status, at the expiration of said year.

Upon motion of the defendant, retired cases will be dismissed after a period of one (1) year, or at a time specified on the judgment.

RULE 9. EXPUNGEMENT ORDERS

Sec. 9.01. Expungement of Dismissed Criminal Cases

All Orders of Expungement shall be initiated through the Criminal Court Clerk's Office effective October 1, 1998. The Criminal Court Clerk shall be responsible to deliver the Orders of Expungement to the Office of the District Attorney for signature along with an executed copy of the warrant(s), to the administrative staff for signature of the appropriate Judge. The Office of the District Attorney shall sign Order of Expungement as evidence of agreement or shall decline to sign. The Office of the District Attorney shall be responsible to return said Orders to the Criminal Judge's Court Clerk's office. The administrative staff of the originating court will be responsible for obtaining the Judge's signature and returning said Order of Expungement(s) to the Criminal Court Clerk's Office. It will be the responsibility of the Criminal Court Clerk's office to notify the attorney or defendant after the Judge has executed the Order of Expungement for filing purposes.

Special or substitute Judges shall not sign Expungement Orders.

In the event a case is dismissed following a bench trial in the Davidson County General Sessions Court said case shall be automatically expunged by the Criminal Court Clerk.

Sec. 9.02. Expungement of Retired Cases

When a party seeks expungement of a case that was previously retired by the Court, a Motion to Dismiss must be simultaneously filed with the Order of Expungement along with an executed copy of the warrant(s) to be expunged, unless the case was scheduled for review by the Court when it was retired. A Motion to Dismiss may not be made until one (1) year after the case was retired unless otherwise specified on the warrant at the time the case was retired.

The Order of Expungement may be signed by the Judge on whose docket the Motion to dismiss is set, or when the case comes on for a schedule review; the

Order need not be entered by the Judge who made the original disposition of the case. If an Agreed Order is not submitted to the Judge for signature, the Motion shall be placed on the docket by the requesting attorney or defendant.

Sec. 9.03. Expungement of Cases Pursuant to T.C.A. § 40-35-313

When a party seeks expungement of a case pursuant to T.C.A. § 40-35-313, a Motion to Dismiss must be simultaneously submitted with notice to the District Attorney's office accompanied by written proof that all requirements have been successfully completed; alternatively, if a case was set for further review by the Court at the time of the original disposition, a Motion to Dismiss is not required.

After an Agreed Order of Expungement is signed, the attorney or defendant shall file said Order with the Criminal Court Clerk's office.

RULE 10. PETITION TO SUSPEND OR MODIFY

Sec. 10.01. Scheduled Petition to Suspend or Modify

Any Petition to Suspend or Modify a Sentence must have a Court date and time such Petition is expected to be heard and in all cases, must be set before the original sentencing Judge. A copy of the petition must be sent to the Office of the District Attorney at least five (5) business days prior to the scheduled hearing date. If the petition to suspend or modify does not include the Court date and time, the Criminal Court Clerk will not set the petition on the docket.

RULE 11. PLEA AGREEMENTS

Sec. 11.01. Plea Agreements — Criminal Bond Dockets

All plea agreements shall be accompanied by a written plea agreement which may consist of the original warrant with the appropriate language reflecting the disposition of the case. All plea agreements shall be signed by the Defendant.

RULE 12. BAIL

Sec. 12.01. Detention without Permitting Bond

A Judicial Commissioner may use discretion as to the setting of bail, but a reasonable bail shall be set, within a reasonable time, in all cases except for capital offenses where the proof is evident or the presumption great, in which case the defendant may be held without bail.

The practice of hold for "open Court" is prohibited except when a defendant is being detained awaiting transportation to another judicial district within the State or awaiting extradition.

Sec. 12.02. Duration of Capias

Any capias issued pursuant to a forfeit, either conditional or final, shall remain in effect until the defendant is apprehended and returned to custody and a disposition is made of the case.

All other capias shall expire after six (6) months from issuance and may be reissued after that time.

Sec. 12.03. Surrender by Bond Companies

Any surrender of a defendant by a bonding company shall be in compliance with T.C.A. § 40-11-130 through § 40-11-137.

The following procedures are to be followed for the surrender of a defendant by means of a certified copy of the defendant's bond where no capias has been issued for the defendant's arrest:

1. This procedure only applies to those cases where bondsman or Pretrial Release surrenders a defendant on a certified copy of the defendant's bond and where no capias has been issued for the defendant's arrest.

2. Any bondsman who intends to surrender a defendant on a certified copy of the defendant's bond may take the defendant to the Judicial Commissioner on duty in Night Court who shall sign the certified copy of bond and issue a mittimus committing the defendant to the Metropolitan Sheriff's department. Alternatively, the bondsman may surrender the defendant directly to the custody of the Metropolitan Sheriff's department.

3. At the same time the mittimus is delivered to the Metropolitan Sheriff's department, the Judicial Commissioner shall also deliver to the surrendered defendant, if present, a "Notice to Surrendered Defendant" which notice shall confirm the following:

NOTICE TO SURRENDERED DEFENDANT

You have been surrendered (placed back in jail) by your bondsman. While your bondsman has the right to surrender you, you also have a right to a Surrender Hearing. You should consult either your private attorney or the Office of the Public Defender regarding your rights. You will be granted a Surrender Hearing within seventy-two (72) hours.

If the surrendered defendant is not present, the Judicial Commissioner shall deliver the "Notice to Surrendered Defendant" to the Metropolitan Sheriff's Department who shall promptly deliver the notice to the surrendered defendant.

4. After the Judicial Commissioner signs the certified copy of the surrendered defendant's bond, the professional bondsman shall take that certified copy of the bond to the Criminal Court Clerk's bond office located in the Criminal Justice Center.

5. The Criminal Court Clerk's bond office shall retrieve the warrant(s) pursuant to which the certified copy of bond was written and docket the surrender defendant for a Surrender Hearing. The Surrender Hearing shall be set on the next Jail Docket.

6. The surrendering bondsman shall be present at the surrender Hearing in order to state to the Court the reason(s) for the surrender.

7. If the Court finds good cause for the surrender of the defendant, the Court shall sign the certified copy of the bond noting the Court's acceptance of the surrender. The signed certified copy of bond shall remain with the warrant.

8. The clerk shall make two (2) copies of the signed certified copy of bond. Both copies shall be given to the surrendering bondsman. The surrendering bondsman may keep one (1) copy. The remaining copy shall be taken by the surrendering bondsman and given to the Metropolitan Sheriff's Department.

Sec. 12.03. Policy for Arrest Warrant (RESERVED)

Compiler's Notes. This rule is reprinted as it appears in the original.

Sec. 12.04. Information Intake Sheets

An information sheet entitled "Prosecution Information sheet" must be completed by all prosecutors before a warrant may issue and must be attached to the warrant. This form is provided to the prosecutor by the Judicial Commissioner, and it shall be the duty of the Judicial Commissioner to assure all information has been completed on this form. This form must be completed before a Domestic Violence Warrant may issue.

RULE 13. INTERPRETERS

Sec. 13.01. Language Interpreters

Foreign language interpreters will be provided for parties involved during criminal in-court proceedings if sufficient notification is made to the Court Administration Office. The Court does not pay for post adjudication interpretation.

Foreign language interpreters are paid by the Administrative Office of the Courts, if the defendant is declared indigent by the Court. In the event the defendant is not declared indigent, interpretation is taxed with the Court costs. The Court may exercise its discretion to waive said Court costs due to indigency.

Interpreters will be present thirty (30) minutes prior to the scheduled Court appearance.

Sec. 13.02. Hearing Impaired Interpreters

Sign interpreters are provided for criminal proceedings at the Court's expense but notification is to be given to the Court Administration Office as soon as the need is determined. Cases involving a sign interpreter will be heard at the beginning of the docket provided the interpreter is prepared for trial.

Sec. 13.03. Hearing Impaired Persons Brought into Night Court

Hearing-impaired persons who are brought into Night Court for any reason must be informed a Night Court Commissioner will contact an interpreter from the League of Deaf and Hard of Hearing to be present during the proceedings in Night Court. The Judicial Commissioner on duty shall immediately notify a League of Deaf and Hard of Hearing interpreter to be present in Night Court, if made aware. For ADA Accommodations contact the Night Court Commissioner sign is posted in Night Court.

RULE 14. NO-SMOKING POLICY**Sec. 14.01. General Policy**

Pursuant to Metropolitan Ordinance No. 094-1035, and Public Chapter 410 of 2007 effective October 1, 2007, smoking is prohibited in public buildings.

RULE 15. FORFEITURE/PROPERTY SEIZURE WARRANTS**Sec. 15.01. Policy**

Pursuant to Tennessee Code Annotated, § 40-33-204, Probable Cause Hearings for the issuance of Forfeiture Property Seizure Warrant will be recorded effective October 1, 1998. All Forfeiture Warrants and taped recordings will be filed and maintained by the Criminal Court Clerk. A certified copy of the recording shall be made available upon request of any party and shall be admissible as evidence.

RULE 16. RESTRICTED DRIVER'S LICENSE**Sec. 16.01.**

All requests for issuance of a restricted driver's license shall be initiated through the Criminal Court Clerk's Office effective October 1, 1998. All paperwork and files relating to restricted driver's licenses shall be maintained in the Criminal Court Clerk's Office.

RULE 17. VIDEO EQUIPMENT GUIDELINES**Sec. 17.01.**

All videos played on the General Sessions Court video equipment must meet the following guidelines:

- CD's and DVD's must be viewed by parties prior to coming to court. Video must be playable in a computer video player or DVD player through TV monitor device without having to install additional software.

- No third party software will be installed on General Sessions Court computers to play videos due to network security issues.

- Most standard video formats are as follows and should be used, MPG, MPEG, WMV, AVI, VOB MOV, for computer or DVD compliant formats playable through DVD player.

SET-ASIDE ORDER

IN THE GENERAL SESSIONS COURT FOR METROPOLITAN
NASHVILLE-DAVIDSON COUNTY, TENNESSEE
DIVISION _____

STATE OF TENNESSEE

vs.

WARRANT NO.(S). _____

DATE OF REQUEST: ____/____/____

REQUESTED BY: _____

BAR ID: _____

SET ASIDE ORDER

It appearing to the Court that there has heretofore a Conditional Forfeiture has been entered by the Court against the above-named Defendant, and it further appearing to the Court that the Defendant has shown to the Court good cause why the Conditional Forfeiture should be set aside;

It is therefore ORDERED, ADJUDGED and DECREED that the Conditional Forfeiture in Division ____ heretofore entered against the Defendant is hereby set aside upon payment of the forfeiture costs.

ENTERED this _____ day of _____, 200 ____.

JUDGE_____
DIVISION

THE PARTIES SEEKING THE SET ASIDE ORDER SHALL PRESENT A COPY OF THE FILE JACKET AND A COPY OF THE AFFIDAVIT ON THE WARRANT AT THE TIME OF THE REQUEST.

DO NOT WRITE BELOW THIS LINE - CLERK'S USE ONLY

Court Date: ____/____/200__ at _____

To request handicapped accommodations
Please contact (615) 862-4260.

ORDER OF CONTINUANCE

IN THE GENERAL SESSIONS COURT FOR METROPOLITAN
NASHVILLE-DAVIDSON COUNTY, TENNESSEE

STATE OF TENNESSEE

vs WARRANT NO. _____

ORDER OF CONTINUANCE

It is hereby Ordered that the above-styled case set for hearing on _____
at ____: ____ is hereby CONTINUED to the date and time entered on this Order at the request of the signed.

Counsel _____

State _____ Defense _____

TO THE PARTY SEEKING THE CONTINUANCE: INITIAL PERSONS TO BE NOTIFIED BY THE CLERK:

TO THE CLERK: YOU ARE HEREBY ORDERED TO NOTIFY ONLY THE PERSONS INITIALED BELOW.

- 1. ____ Notify the victim Witness Office.
- 2. ____ Send a cancellation and new Court date to all Police personnel previously subpoenaed
- 3. ____ Notify each witness listed on the warrant.
- 4. ____ Notify the defendant.
- 5. ____ Notify the defense Counsel.
- 6. ____ Notify the Office of the District Attorney.
- 7. ____ Check for co-defendant(s), and notify co-defendants and Counsel.

If the continuance is granted at least five (5) days prior to the original Court date, mailing notice is sufficient, except for police who must receive a cancellation notice; if fewer than five (5) days, telephone the above-listed persons, in addition to mailing notices.

ENTERED THIS _____ day of _____, 20__.

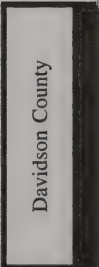
JUDGE

This case is continued to _____ at _____.
(Month) (Day) (Year) (Time)

COURT ROOM NUMBER _____

_____, Clerk.

To request handicapped accommodations
Please contact (615) 862-4260.



**LOCAL RULES OF THE JUVENILE COURT FOR THE
METROPOLITAN GOVERNMENT OF NASHVILLE AND
OF DAVIDSON COUNTY, TENNESSEE**

Effective August 1, 2016

- RULE.
- 1. Scope and Purpose
 - 2. Courtroom Decorum
 - 3. Nashville Bar Association's Professionalism Committee Lawyer's Creed of Professionalism
 - 4. Sessions and Office Hours
 - 5. Court Costs and Filing Fees
 - 6. Pleadings and Exhibits
 - 7. Service of Process, Subpoenas and Other Documents
 - 8. Record of Proceedings
 - 9. Scheduling of Hearings and Continuances
 - 10. Guardian ad Litem and CASA
 - 11. Motions
 - 12. Certificate of Readiness — Witness and Exhibit Lists

- RULE.
- 13. Mediation and Parenting Plans
 - 14. Extraordinary Relief
 - 15. Dormant Cases
 - 16. Orders and Decrees
 - 17. Restitution
 - 18. Foster Care Review Board Proceedings
 - 18a. Applicable Rules.
 - 18b. Scheduling and Notice.
 - 18c. Documentation.
 - 18d. Quorum and Attendance.
 - 18e. Conduct of the Review.
 - 18f. Extension of Foster Care (EFC).
 - 19. Requirements for Court Appointed Counsel in Delinquency and Dependent and Neglected Cases
 - 20. Waivers or Modification of Rules

Rule 1. Scope and Purpose

These rules shall govern the practice and procedure in the Juvenile Court of Metropolitan Nashville and Davidson County, Tennessee. These rules will be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. The Judge will deviate from these local rules only in the exceptional cases where justice so requires. These rules supersede all Rules of Practice and Procedure in the Juvenile Court of Metropolitan Nashville and Davidson County, Tennessee. These rules are effective August 1, 2016.

Rule 2. Courtroom Decorum

There will be no use of tobacco products, eating, drinking or chewing of gum in the courtroom. Attorneys and court staff may have drinks in closed containers in the courtroom. Attorneys, court attendants and all parties will be appropriately dressed while in court attendance.

There will be no telephones or other electronic devices allowed in the court unless the device is silenced. No texting, recording, photography or emailing will be allowed in the courtroom while court is in session, absent permission of the Court.

Rule 3. Nashville Bar Association's Professionalism Committee Lawyer's Creed of Professionalism

Preamble A lawyer owes to the administration of justice personal dignity, integrity and independence and a duty to make the system of justice work fairly and efficiently. In order to carry out that responsibility, a lawyer must comply with the letter and spirit of the disciplinary standards applicable to all lawyers, as well as conducting himself or herself in accordance with the following Creed of Professionalism when dealing with a client, adverse parties, their counsel, the Courts and the general public.

With Respect to My Client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my judgment or ability to provide my client with objective and independent advice;
2. I will endeavor to achieve my client's lawful objectives in all matters of representation as expeditiously and economically as possible;
3. In approaching cases, I will counsel my client with respect to mediation, arbitration, and other alternative methods of resolving disputes;
4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and against insisting on tactics which are intended to delay improper resolution of a matter or to harass or to drain the financial resources of an adverse party;
5. I will advise my client that civility and courtesy are expected and are consistent with zealous representation;
6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

With Respect to Adverse Parties and Their Counsel:

1. I will conduct myself with candor, in a spirit of cooperation and scrupulously observe all agreements and mutual understandings;
2. I will be courteous and civil, both in oral and written communications;
3. I will not knowingly make statements of fact or law that are untrue;
4. I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
5. I will endeavor to consult with adverse counsel before making scheduling decisions and before any required rescheduling, and I will cooperate with adverse counsel when scheduling changes are requested;
6. I will not use litigation or any other course of conduct to abuse or harass, such as seeking discovery which is clearly improper, abusive or excessive, or seeking sanctions or disqualification unless it is justified both by my client's lawful objective and by the interests of justice;
7. I will not use tactics which are intended to delay improper resolution of a matter or to harass or to drain the financial resources of an adverse party;
8. In all matters of legal representation I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect, including making disparaging personal remarks to-

ward adverse parties, counsel and witnesses and making demeaning comments regarding race, religion, national origin or gender* .

9. I will not provide drafts of time sensitive documents or serve pleading, motions or briefs on another party or counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

10. In business transactions I will not unreasonably quarrel over irrelevant matters of form or style, but will concentrate on matters of substance and content;

11. I will attempt to prepare and revise documents which correctly reflect the agreement of the parties, and will not purposely include provisions which have not been agreed upon or purposely omit provisions which are necessary to reflect the agreement of the parties;

12. I will clearly identify, for other counsel or parties, all changes that I have made in documents submitted to me for review;

13. Where consistent with my client's interest, I will communicate with adverse counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

14. I will not take action adverse to the interests of a party known to be represented by counsel without notice to adversary counsel sufficient to permit a response;

15. I shall respond promptly to attempts by other lawyers to contact me whether by telephone or by correspondence.

With Respect to the Courts and Other Tribunals:

1. I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the Court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

2. I will treat with respect the Court, members of the jury, witnesses, adverse parties and adverse counsel;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;

4. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

5. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleading and discovery requests;

6. When hearings or depositions have to be canceled, I will notify adverse counsel, and, if appropriate, the Court as early as possible;

7. Before setting dates for hearings or trials (or if that is not feasible, immediately thereafter) I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court and adverse counsel of any likely problem in that regard;

8. I will be punctual in attending Court hearings and depositions;

9. I will be candid with the Court at all times;

*The Davidson County Juvenile Court adds "gender identity and sexual orientation" to all references to "race, religion, national origin or gender" in the Creed of Professionalism.

10. I will refrain from commentary that reflects or references race, religion, national origin or gender* in a demeaning fashion.

With Respect to the Public and to Our System of Justice:

1. The law is a learned profession and I am committed to its goals of devotion to public service and improvement of the administration of justice;

2. I will keep myself current in the areas in which I practice and, when necessary, will associate with, or refer my client to counsel knowledgeable in another field of practice;

3. I will be mindful that the law is a self-regulated profession and it is my duty to report unprivileged knowledge of any violation of D.R. 1-102;

4. I will be mindful of the need to protect the interests of the public and promote the image of the justice system in the eyes of the public when considering methods and contents of advertising;

5. I will contribute my talents, time, resources and civic influence on behalf of those persons who cannot afford adequate legal assistance and those organizations which serve the public good;

6. I will give of my talents and time to the organized bar to better the professional education of the bar, assist in efforts to improve the law, aid in efforts to assist colleagues and to promote public understanding of the justice system.

Rule 4. Sessions and Office Hours

There shall be a session of Court daily, except on non-judicial days, which are Saturdays, Sundays, and holidays. Court hours are 8:00 a.m. to 4:30 p.m. Exceptions to this schedule may be authorized by the Magistrate or Judge assigned to a case. Other days and hours may be designated by the Judge. Unless the Judge directs otherwise, a Magistrate may hear any case in which the Court has jurisdiction, with the exception of judicial bypass.

The offices of the Court shall be open for the regular transaction of business from 8:00 a. m. to 4:30 p.m. except on non-judicial days.

Rule 5. Court Costs and Filing Fees

Costs for filing a pleading, service of process, and court costs are to be established and assessed by the Clerk of the Juvenile Court. The schedule of fees is available for inspection and copying upon request in the Office of the Juvenile Court Cleric. Filing fees or costs may be waived by the Court for good cause.

Rule 6. Pleadings and Exhibits

All pleadings filed or presented to this Court shall be on letter-sized (8 ½" x 11") paper. An original pleading shall be filed in all causes and shall be accompanied by sufficient copies necessary for service upon the parties and sibling files. Attorneys shall provide copies of all exhibits for the Court and parties.

*The Davidson County Juvenile Court adds "gender identity and sexual orientation" to all references to "race, religion, national origin or gender" in the Creed of Professionalism.

Rule 7. Service of Process, Subpoenas and Other Documents

Except as provided below, all process shall be delivered directly to the Office of the Juvenile Court Clerk. Process shall be issued by the Clerk of the Juvenile Court and shall be completed by the appropriate statute or rule of procedure.

After service of process is effectuated by personal service for an initial scheduling and the party has presented him/herself to the Court, subsequent notice may be made by mail or in open court. All parties shall appear at all proceedings unless excused by the Judge or Magistrate.

Rule 8. Record of Proceedings

The Clerk shall record the proceedings in all hearings. Audio/video recordings shall be catalogued and maintained within the Office of the Clerk, by the Clerk, for a period of one (1) year. Requests to maintain recordings beyond this period must be filed by Order of the Court with the Clerk and include a specific time period recordings shall be held.

Rule 9. Scheduling of Hearings and Continuances

1. At any time prior to the trial date upon Motion of any party or on its own Motion, the Court may refer any appropriate case for mediation.

2. Cases may be continued only by leave of Court. Cases will not be continued except for good cause. All cases continued by leave of the Court will be by written order stating the reason for passing, at whose instance, and the date of reassignment. Agreed upon continuances shall be by Order signed by counsel for all parties and shall specify a new trial date. It is the responsibility of the party requesting the continuance to notify all parties and witnesses subpoenaed of the continuance and the reset Court date. A motion must be filed unless otherwise approved by the Court.

3. No case shall be "continued indefinitely". Any case not specifically scheduled for hearing within one (year) of the date of filing or last issued process or service, whichever is later, shall be subject to dismissal pursuant to Rule 15 of the Local Rules.

4. Absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and the Rules of Civil Procedure.

5. When a case is set without objection, failure to complete discovery, unavailability of counsel on the trial date, inability to take depositions, or failure to complete any other trial preparation will not be grounds for a continuance, except for good cause shown prior to trial date. In cases continued or passed for reassignment, the Court may award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses and tax the same as Court costs.

6. All dispositional hearings shall occur immediately after the adjudication of a petition unless the Court deems otherwise. The Court may on its own Motion set a later dispositional date.

7. Bond in Transfer Hearings: If a child is detained beyond the statutory ninety (90) day time period, upon appropriate application to the Court by the attorney for the child, the Court will entertain a Motion to Set Bond.

Rule 10. Guardian ad Litem and CASA

The Court may appoint a guardian ad litem either on its own motion or at the request of any party when the Court deems such an appointment to be appropriate.

The Court may also appoint CASA to act on behalf of a child in determining the best interest of the child. Any party to a proceeding may request that CASA be appointed to the case. CASA shall be given notice of all hearings, staffings, adjudications, dispositions and any other notices given to the parties with regards to the case in which they were appointed. CASA shall be entitled to be present at any court proceedings or any other formal or informal proceeding, including, mediations, pre-trial conferences or other such proceedings involving the child and to which the other parties have a right to be present.

Rule 11. Motions

I. Motions — Generally:

a. Motions shall be set for hearing on the Dockets designated by the Judicial Officers to whom the case has been assigned. Legal argument may be heard and agreements announced on the Motion docket. Testimony will not be heard at the initial Motion docket. If testimony is required, the case will be re-docketed. Briefs and responses may be required at the discretion of the judicial officer.

b. Motions shall be filed at least fourteen (14) days prior to setting for hearing, unless special approval from the Court is obtained prior to the filing. Any request for reimbursement of attorney fees requested from Metropolitan Government shall give two (2) weeks' notice to the Legal Department.

Motions to Withdraw may set forth language as follows: *"Failure to file a response prior to the Motion date may result in the Motion being granted."* If said language is included, the lawyer need not appear. If someone appears and opposes said Motion, it will be docketed for hearing and everyone notified.

Complex and Lengthy Fee Request Motions may include language as follows: *"This Motion is expected to be heard at _____ on ____, 20__ before the Honorable _____; if no one appears to oppose said Motion, the Court will review the fee request without the necessity of a hearing."*

c. Motions for Discovery in Dependent and Neglect cases shall be routinely granted unless a written objection is filed. If an objection is filed, the Motion shall be set for a contested hearing.

d. "Special" set Motions must have prior approval of the Court and shall not be set upon the Docket unless the movant certifies as documented in the certificate of service that he/she has attempted to resolve the matter by making contact with all attorney/parties and that circumstances necessitate the Motion needs to be set outside the fourteen (14) day rule.

II. Motions — Delinquency Proceedings:

Delinquency pre-trial motions must be set on the Motion docket of the judicial officer set to hear the trial on the general issue.

The following must be raised prior to trial or transfer hearing by written Motion:

- Motions to Suppress evidence

- Request for discovery and inspections
- Requests for a severance or consolidation of charges or defendants

Failure of a party to raise defenses or objections or to file motions required prior to trial shall constitute waiver thereof, but the court for good cause may grant relief from the waiver.

III. Motions for Depositions of Victims for Juvenile Court Proceedings — Criminal Court Case Pending:

Attorneys filing Motions to depose victims in neglect, abuse or sexual abuse cases or children in custody cases where neglect, abuse or sexual abuse is alleged, shall give notice to the Office of the District Attorney General and criminal defense counsel when the attorney is aware that a criminal charge is pending regarding the same matter.

NOTES TO DECISIONS

1. **Timeliness.**

Clerk of juvenile court’s motion challenging the authority of special prosecutors to argue a contempt case against him in the juvenile court was filed the day before the hearing on the alleged contempt and was therefore untimely

under Davidson County, Tenn., Juv. Ct. R. 10b. In re Lineweaver, 343 S.W.3d 401, 2010 Tenn. App. LEXIS 75 (Tenn. Ct. App. Jan. 28, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 769 (Tenn. Aug. 25, 2010).

Rule 12. Certificate of Readiness — Witness and Exhibit Lists

In all cases set for adjudication and/or disposition except for delinquency cases, a Certificate of Readiness containing the following shall be filed with the Court and served upon all parties no later than ten (10) days prior to the scheduled hearing:

- a. A Witness List — including the names, addresses and phone (if known) of all witnesses (other than impeachment and rebuttal witnesses). Any witness not so listed shall not testify other than impeachment or rebuttal witnesses.
- b. An Exhibit List — copies of exhibits to be proffered at trial (other than impeachment or rebuttal exhibits). Exhibits, which are not easily capable of photocopy reproduction, shall be identified and made available for inspection by opposing counsel.

Failure to comply with this rule could result in sanctions to the attorneys and offending parties’ witnesses not being able to testify.

Rule 13. Mediation and Parenting Plans

Parties shall be made aware that Mediation services are available and may be ordered at the discretion of the court in contested cases. The Court may also order that a Parenting Plan be submitted and incorporated by reference into any Final Order. The Court may also require co-parenting classes.

Rule 14. Extraordinary Relief

In any case where extraordinary relief is needed or requested, a Petition must be filed. The Court will determine whether the matter is an emergency and should be heard immediately ex parte or whether all parties can be given notice prior to the hearing on the request for extraordinary relief. Any request for extraordinary relief must comply with statutory requirements.

Restraining Orders: No restraining order shall be granted unless notice is given to the opposing party or good cause for dispensing with notice is shown and supported by affidavit. Proposed restraining orders shall be prepared by counsel prior to submitting the request for relief to the court. The restraining order shall provide for the setting of a hearing for a temporary injunction and shall provide a place thereon for the court to set a date, time and location for such a hearing.

Granting of Age Waiver for Marriage License: The Court may determine whether to grant judicial consent authorizing the county clerk to issue a marriage license waiving the waiting period or age limit upon proper application consistent with *Tenn. Code Ann. § 36-3-107*.

Judicial Bypass: The Court may determine whether to grant judicial consent to abortion upon proper application consistent with *Tenn. Code Ann. § 37-10-304*.

Request for Authorization for Use of Child in Law Enforcement Operation: The Court may determine whether to grant permission to use a child in a law enforcement operation.

Handling of Criminal Injuries Compensation Awards for Minors: Where an attorney has been directed by the Tennessee Claims Commission or the Division of Claims Administration to turn over criminal injury compensation awards to the Juvenile Court Clerk's Office, said money shall be accompanied by a petition and order directing the clerk to establish an account for the minor child. The petition shall state the child's name, social security number, that the funds are a result of criminal injury compensation award and the amount that is to be tendered into the Court. The petition will also request that the funds be placed in an interest bearing account for the benefit of the minor child. The order shall state the child's name, when the money was received by the Court, the amount being tendered to the Court, that the same shall be placed in an interest bearing account, that to encroach the fund a Motion must be filed setting out the need for the funds, the location of the account, and a certificate of service to the custodian of the minor child and any other appropriate individuals.

Form petitions meeting the requirements of this rule may be obtained from the Court Clerk's Office. Encroachment on the funds shall be allowed for any injury related expenses specifically contemplated by the claims commission in granting the compensation award. Encroachment on the funds may also be allowed for unusual medical expenses (e.g., eyeglasses or braces) or unusual educational opportunities, (e.g., school field trips), or other needs with good cause shown. In order to obtain encroachment on the funds, the custodian or other appropriate individuals must file a Motion with the Juvenile Court. The Motion shall state the child's name, the amount of money being currently held in the clerk's office for the benefit of the minor child, the particular need or expense for which disbursement is sought, and the amount sought. A written estimate or other appropriate documentation of the specific amount requested should be attached to the Motion.

The clerk's office shall ensure that the attorney who represented the child in obtaining the compensation award is served with a copy of any Motion to encroach. The attorney shall either appear at the hearing on the Motion or the

custodian or individual petitioning the Court to encroach shall be placed under oath and shall testify as to the child's need. If the Court grants the Motion, an order shall be filled out stating the date, the amount of the disbursement, and to whom the check(s) are to be made payable. In the event that the check is to be made payable to a health care provider, school, agency or other appropriate person, the clerk's office shall be charged with the responsibility of obtaining the address of the healthcare provider, school, agency or other appropriate person and forwarding the check directly to them. In the event the sum is made payable to the custodian or other appropriate individual, that person shall be responsible for making an accounting to the Court within thirty (30) days from the date of the hearing as to how the money was spent. In these situations, the Court shall direct a deputy clerk to monitor the file and issue a show cause hearing in the event the custodian or other appropriate individual does not make the accounting to the Court.

Rule 15. Dormant Cases

To expedite cases, the Court may take reasonable measures to purge cases that have not been disposed or scheduled for hearing within 12 months of the date of filing, last summons issued or service, whichever is later.

In all Parentage cases, including, but not limited to, all IV-D child support cases, custody and parenting time cases, if the case is not disposed of within twelve (12) months of the date of filing, last summons issued or service, whichever is later, the case shall be dismissed unless the party petitioning the court files for relief from this rule prior to the dismissal.

Rule 16. Orders and Decrees

Unless otherwise directed the prevailing party shall draw the order and file the same within 10 days of the hearing (excluding non-judicial days). All Orders must include a certificate of service to all parties.

Any Agreed Order that is announced in open court on the record does not have to be circulated to parties for their signature(s) prior to being submitted to the Clerk but must state in the body of the Order that the agreement was announced in open court, unless otherwise specified.

Required Additional Language for Magistrate Orders: The following language should be inserted in all Magistrate orders. *"This order may be appealed to the Juvenile Court Judge or as provided by Statute, by filing a request for rehearing with the Juvenile Court Clerk. This order must be obeyed until the Judge rules otherwise. **ANY FAILURE TO COMPLY WITH THIS MAGISTRATE'S ORDER IS PUNISHABLE BY CONTEMPT, FOR WHICH THE PENALTIES MAY INCLUDE A FINE AND/OR IMPRISONMENT.**"*

Rule 17. Restitution

The Court may set restitution in Delinquency cases on Motion. The Court may limit discovery if it determines that the information sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or expensive, or the discovery sought is unduly burdensome or expensive, taking into account, the needs of the child and the case.

It is not necessary for the victim to attend the Motion for Restitution docket. If no settlement is reached, the matter will be set for hearing on the issue of restitution and the victim notified to attend.

The amount of restitution may be “Reserved” by the State at disposition for future action when, in the opinion of the Court it is in the child’s best interest to begin treatment and rehabilitation despite the fact that the amount of restitution is unresolved.

If the child is found to be delinquent, the Court shall determine if any monetary damages actually resulted from the child’s delinquent conduct. Upon a determination that monetary damages resulted from such conduct, the Court shall order the child to make restitution for such damages unless the Court further determines that the specific circumstances of the individual case render such restitution, or a specified portion thereof, inappropriate. *Tenn. Code Ann. § 37-1-131(b)(1)*.

Rule 18. Foster Care Review Board Proceedings

Rule 18a. Applicable Rules

Davidson County Foster Care Review Board (FCRB) Program will abide by Rule 403 of the Tennessee Rules of Juvenile Practice and Procedure in addition to the local rules set forth herein.

Rule 18b. Scheduling and Notice

The Department of Children’s Services (DCS) is required to provide written notice to all parties, their attorneys, guardian ad litem (GAL) and foster parents. Timely notice must be given not less than ten (10) calendar days prior to the scheduled board review.

Should there be an error where notice was not provided in a timely manner, the DCS Liaison shall notify the Court Facilitator, who will have the case reset for the following month.

If a party is not present and it is determined at the board meeting timely notification was not given, the board will not review the case and it will be reset. The DCS Regional Administrator will be notified of the rescheduled review.

If it is determined at the board meeting required documents are missing or outdated, the board will reset the review for the following month. The DCS Regional Administrator will be notified of the rescheduled review.

The board will reschedule the review for the following month if a child is absent without prior approval from the Court Facilitator. The Court will notify the DCS Regional Administrator of the rescheduled review. If the rescheduled review is unable to proceed because of the child’s absence, the board will file a direct referral to the Court and notify the DCS Regional Administrator and the DCS Commissioner.

Timely notice must be provided to all parties by DCS prior to any rescheduled review. If it is determined timely notice was not given to all parties or necessary documentation was not provided, the board will file a direct referral to the Court notifying the DCS Regional Administrator and the DCS Commissioner of the noncompliance.

Rule 18c. Documentation

A copy of each notification letter must be included in the case documentation packet submitted to the Court. Each notification letter must identify the intended party, their association to the case, method of contacting the party with address, e-mail address and/or telephone number and the date notice was given.

All required documentation shall be transmitted to the Court Facilitator at least ten (10) days prior to the scheduled review. The DCS Liaison shall ensure its accuracy and completeness prior to submitting packet to the Court. The DCS Liaison shall ensure compliance with this policy.

The Court Facilitator will review the case packets when received and notify the DCS Liaison via email if any documentation is missing and/or outdated. DCS shall then supply the missing information.

Rule 18d. Quorum and Attendance

The Court Facilitator is responsible for determining that a quorum of members, with a minimum of four (4), exists prior to each review. The review will only proceed if all necessary persons are present or it is determined that those who are absent were provided proper notice.

All children and youth in Foster Care shall attend all initial and subsequent reviews. DCS is responsible to facilitate the transportation for the child to attend the reviews. DCS shall arrange for transportation whether the child's placement is a DCS Foster home, a contract facility or an agency placement.

If the youth or young adult (age 14 & older) is scheduled to meet with a peer advocate, DCS shall assure they arrive 30 minutes prior to the scheduled review time.

Prior approval from the Court Facilitator is necessary for any child's absence from the review. Such absence will only be approved if a medical doctor determines attendance poses some risk to the child or if there are extenuating circumstances and supporting documentation is provided. The board will reschedule the review for the following month if a child is absent as set forth above.

The board members will vote on resetting the review upon late arrival of any party.

Rule 18e. Conduct of the Review

The board members will ask questions and hear testimony from the parties. All parties including children, parents, attorneys and DCS will exit the meeting room for the board to deliberate. Only the Court Facilitator and the board members are allowed to be present for deliberation and recommendation development. The parties and attorneys should return to hear the board's recommendations.

Rule 18f. Extension of Foster Care (EFC)

Pursuant to DCS policy, the 'Best Interest' Order must be issued by the Court of Jurisdiction within one hundred seventy-nine (179) days of the Voluntary Placement Agreement (VPA) date. The VPA date counts as day one (1). The young adult becomes ineligible for Title IV-E on the one hundred

eighty-first (181st) day from the Voluntary Placement Agreement (VPA) date, for the rest of the EFC episode. DCS should file its Motion for a Best Interest Hearing within thirty (30) days of the youth signing a voluntary placement agreement so that scheduling of FCRB and annual Permanency Planning Hearings can be expedited.

Rule 19. Requirements for Court Appointed Counsel in Delinquency and Dependent and Neglected Cases

Absent judicial waiver by the Judge of the Court, before any attorney shall be eligible to accept appointments for Delinquency or Dependent and Neglected cases in Davidson County Juvenile Court, he/she shall have attended training seminars approved by the Court. Information on becoming eligible is available through the STAR (Statistics, Training, Analysis, and Resources) Team of Juvenile Court.

Rule 20. Waivers or Modification of Rules

Any of the rules herein enacted may be waived or modified by special order of the court when in the Court's opinion such waiver or modification is necessary in order to do justice or to arrive at the equities of the case between or among the parties involved. [Amended December, 1999; amended July, 2000; amended March, 2001; amended November, 2002; amended February, 2004; amended January 1, 2005; amended July 1, 2007; amended July 1, 2013; amended September 2, 2016; amended September 26, 2018.]

DAVIDSON COUNTY CIRCUIT, PROBATE AND
GENERAL SESSIONS — CIVIL E-FILING RULES

Effective July 1, 2019

RULE.	RULE
1. Short Title	8. Electronic Notification and Delivery of Documents
2. Definitions	9. Time and Effect of E-Filing
3. Scope of Rules	10. Payment of Filing Fees
4. No Warranty	11. Conventional Filing
5. Authorized Registered Users	12. System Use
6. Registered User Understanding and Account Maintenance Obligations	13. File Size Limitation for All Electronic Filings
7. Format of Documents	

Rule 1. Short Title

These rules may be cited as the “*Davidson County-Circuit, Probate and General Sessions-Civil Courts E-Filing Rules*.” (Adopted effective July 1, 2019.)

Rule 2. Definitions

The following words or phrases used in these Rules are defined as follows:

(a) “*Court*” means the Court of Davidson County-Circuit, Probate, General Sessions-Civil, including all of the divisions of the Clerk’s Office of the Court (“*Court Clerk*”). When specificity is needed, the Office of the Clerk of Court (“*Court Clerk*”) may be referenced separately.

(b) “*Electronic Filing*” (“*E-Filing*”) means the electronic transmission of documents in cases using the dedicated E-Filing system maintained by the Clerk of the Court for the purposes of filing.

(c) “*Electronic Service*” (“*E-Service*” or “*E-Served*”) means the automatically generated electronic transmission, by and through an e-filing system, of a notice to all participants in a case who are registered users that a document has been e-filed. Electronic service does not include service of process or Summons to gain jurisdiction over persons or property.

(d) “*Conventional Service*” means the certification that a true and correct copy of documents filed have been mailed, postage prepaid, to a party, attorney or representative under *TRCP* 5.

(e) “*Electronic Notary*” (“*E-Notary*”) means a document that is required to be signed, verified, notarized, acknowledged, sworn to, or made under oath may be e-filed as a scanned image or electronically notarized in accordance with *Tennessee Code Annotated, Title 8, Chapter 16*.

(f) “*eFlex*” refers to the service provider used by the Court for *E-Filing* and *E-Service* of documents via the internet.

(g) “*E-Filer*” means a registered user of the dedicated e-filing system who e-files a document

(h) “*Conventional Filing*” means filing of physical paper documents with the Clerk’s Office.

(i) “*Registered User*” is a person who has properly registered with and has been authorized to use the e-filing system for the e-filing of documents in accordance with the requirements of the Courts’ Local Rules. A *Registered User* is deemed to have consent to receive *E-Service* and is responsible for maintaining a valid and current e-mail address and keeping same up to date in the a-filing system.

(j) “*Documents*” that may be *E-Served* under this Rule include only those items that must be served pursuant to *Tenn. R. Civ. P. 5.01* and any similar General Sessions Court Rules. (Adopted effective July 1, 2019.)

Rule 3. Scope of Rules

(a) Use of eFlex for *E-Filing* and *E-Service* delivery of notification of documents is intended to be consistent with and in accordance with *Sup. Ct Rule 46A, T.R.C.P. 5B* and *Tennessee Code Annotated, Title 16, Chapter 15, Part 7*. Registered Users agree to comply with *E-Filing* and *E-Service* requirements set out by law.

(b) The Court may at any time revise the E-Filing Rules, policies and procedures as needed to comply with changes in law or legal interpretation, and to facilitate use or to more accurately and efficiently create a record of the case, without notice. Registered Users are responsible for reviewing the E-Filing Rules for revision.

(c) The Court Clerk maintains the official case file in electronic formats. Documents submitted to the Court are maintained by the Court in accordance with the *Tennessee Open Records Act*. (Adopted effective July 1, 2019.)

Rule 4. No Warranty

(a) Every effort is made to provide accurate and current information thru eFlex. However, due to updates and resources, there may be times that the system is down which will result in outdated/inaccurate information. The Circuit Court Clerk makes no warranties regarding the availability of the eFlex system or the accuracy, reliability, or content of the information provided.

(b) Due to the complex nature of the internet, the Circuit Court Clerk does not warrant that access to eFlex or the operation or performance of the system will be uninterrupted or error-free. The operation of eFlex is subject to limitations, delays, and problems inherent with the internet. The Circuit Court Clerk will use reasonable efforts to notify and cure any such defects.

(c) Refer to the Court’s Local Rules regarding the effect of any statute of limitations when the eFlex system is down or inoperable. (Adopted effective July 1, 2019.)

Rule 5. Authorized Registered Users

For the purpose of accessing eFlex over the internet, only the following members of the general public are authorized to register as “*eFlex Registered Users*”:

(a) Attorneys licensed to practice in the State of Tennessee in good standing.

- (b) Attorneys admitted to practice on a case *pro hac vice*.
 - (c) Pro se and indigent litigants.
 - (d) Authorized agencies that have a legal duty to file Court documents.
- (Adopted effective July 1, 2019.)

Rule 6. Registered User Understanding and Account Maintenance Obligations

(a) Only persons who are authorized *Registered Users* and who seek to *E-File* or *E-Serve* may register for an eFlex account, and only for Court filings on cases before the Court for whom they are attorney of record, an active party, or authorized agent. A *Registered User* who knowingly authorizes or permits his or her User name or password to be utilized by another is fully responsible for said transmissions and communications over eFlex.

(b) Authorized persons may register for an eFlex account.

(c) Upon receipt of a properly executed “click through” Registered User Agreement, the *User* will create a confidential password for the system which will be used to submit documents for *E-Filing*.

(d) By use of eFlex, the *Registered User* understands and agrees that the use of a login process with a user name and password followed by an approval process serves as a replacement of a signature on filed documents and serves as an “electronic signature” under T.C.A. §16-1-115. Every pleading, document, and instrument electronically filed or served shall be deemed to have been signed by the *E-Filer* and shall bear the typed name, address, and telephone number of the *E-Filer*, and the Bar Number of the *E-Filer* if submitted by an attorney.

(e) *Registered Users* of the system shall immediately update through eFlex any change in user name, delivery address, telephone number, fax number, and/or e-mail address. In addition to updating any change in eFlex, attorneys must at the same time notify the Bar Association of the change.

(f) *Registered User* agrees to regularly monitor the eFlex notifications, filing statuses, associated e-mail accounts and attempted eFlex logins. The IP address for each attempted login will be documented for additional security.

(g) *Registered User* is responsible for immediately notifying the Office of Circuit Court Support at (615) 862-4444 in the event of any suspected fraudulent use of the eFlex account.

(h) *Registered User* may request electronic filing technical assistance weekdays during offices hours (excluding holidays) by calling the Office of Circuit Court Clerk Support at (615) 862-4444 and/or by e-mail at efilesupport@nashville.gov.

(i) These E-Filing Rules remain in place and are binding upon the *Registered User* as long as the *User* remains a registered user of the eFlex electronic filing system. *Registered Users* may be prevented from using the eFlex system for violation of the E-Filing Rules by the Court Clerk. (Adopted effective July 1, 2019.)

Rule 7. Format of Documents

(a) For some documents, parties will be prompted to complete a pleading form which requires the input of certain requested information or the selection of an

applicable box/menu item. The electronic document title of each pleading or other document shall include:

- (i) Party or parties filing/serving the document,
- (ii) Nature of the document,
- (iii) Party or parties against whom relief, if any, is sought; and
- (iv) Nature of the relief sought. (Adopted effective July 1, 2019.)

(b) For certain documents, parties are to prepare a paper copy of the document to be *E-Served*, and are to save or upload a scanned copy of the document (in PDF format) to eFlex. Submitting a scanned copy by e-mail to the Court Clerk will NOT be sufficient for *E-Service*.

(c) When instructed by the Court or Local Rules, parties shall submit the official paper copy of the document to the Court in the manner directed by the Court.

(d) All electronically filed and served pleadings shall be formatted in Word or PDF and shall conform to the *Tennessee Rules of Civil Procedure* and *Local Rules* governing formatting of paper documents, and in such other and further format as the Court may require.

(e) When e-filing a document that requires a notarization, the document may be *E-Notarized* in compliance with the “*Online Notary Public Act*” provided for in *Tennessee Code Annotated, Title 8, Chapter 16*. (Adopted effective July 1, 2019.)

Rule 8. Electronic Notification and Delivery of Documents

(a) *Registered User* agrees and consents that the e-mail address provided in the account request and maintained in the *Registered User's* eFlex user profile supersedes the Court's Case Management System for the purpose of electronic notification resulting in effective notification and delivery of filed documents.

(b) Delivery of *E-Service* notifications and documents through eFlex to other registered Users shall be considered valid and effective service and shall have the same legal effect as proper service of an original paper document, thereby replacing the need for most paper notifications except when required by law (e.g., for a *Complaint*, *Petition*, or other document that must be served with a *Summons* or *Subpoena*). Furthermore, when instructed by the Court, Registered User must submit an original paper copy of any document to the Court for filing to be completed.

(i) Documents electronically filed **under seal** will not be *E-Served*. *Conventional Service* must be effectuated by certifying the mailing of the document by pre-paid postage.

(c) *E-Service* delivery of notifications and documents shall be deemed complete when the transmission to eFlex is completed and *Registered User* receives notification.

(d) *Registered Users* and parties who register with eFlex consent to receive *E-Service* delivery of notifications and documentation and will be deemed to have waived other service, EXCEPT when physical service of paper Subpoena or Summons is required by law, in which case physical service shall be completed, in addition to *E-Service*.

(e) *Registered User* agrees to accept electronic notices through e-mail as a courtesy notification of a document filed with the Court.

(f) *Registered User* agrees that the official electronic Court notifications are maintained only through eFlex. Therefore, *Registered User* consents to accept e-mail notifications of a hearing or trial as valid notice, and will be deemed to have waived other service. (Adopted effective July 1, 2019.)

Rule 9. Time and Effect of E-Filing

(a) *Registered Users* may file electronic documents through eFlex twenty-four (24) hours a day, seven (7) days per week, except when the eFlex system is down for maintenance, etc.

(b) Other than documents noted in **Section [Rule] 11(e)** of these E-Filing Rules that are required to be filed in paper format, any pleading filed electronically shall be considered as filed with the Court when the transmission to eFlex is complete.

(c) Any document e-filed by 11:59 p.m. shall be deemed filed on that date.

(d) eFlex is an agent of the Court for the purpose of electronic filing, receipt, service and retrieval of electronic documents.

(e) Upon completion of filing, eFlex shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing.

(f) In the event the Court Clerk rejects the submitted documents following review due to substantive defects that prevent the document from being filed, the documents shall not become part of the official Court record and the *E-Filer* will receive notification of the rejection.

(i) Registered Users may be required to re-file the instrument(s) to meet necessary filing requirements. (Adopted effective July 1, 2019.)

Rule 10. Payment of Filing Fees

(a) *Registered Users* shall pay statutory filing and service fees electronically for any e-filed documents submitted to the Court through eFlex. Filing fees are due and payable at the time of filing unless the party is approved by the Court to proceed in indigent status.

(b) A statutorily approved *two point two five percent (2.25%)* convenience (vendor) fee will be assessed on payments made by credit/debit card and electronic check.

(c) Attorneys and Firms may apply for an Escrow Account with the Circuit Court Clerk by submitting an *Application* and minimum deposit of *Five Hundred and 00/100 Dollars (\$500.00)*.

(i) Escrow Accounts may be accessed without incurring a convenience fee. (Adopted effective July 1, 2019.)

Rule 11. Conventional Filing

Papers that are filed by “conventional filing” means will be converted to electronic format.

(a) If filed at the counter, the conventional papers will be scanned and returned to the *E-Filer*, if requested. Otherwise, the conventional papers will be destroyed after converting to electronic format.

(b) If filed by mail or courier, the conventional papers will be scanned and returned to the *E-Filer* only if accompanied by a self-addressed, stamped

envelope with sufficient postage for the return. Otherwise, the conventional papers will be destroyed after converting to electronic format.

(c) Once converted, the electronic format of the document is the official Court record.

(d) If exhibits are submitted, the Clerk may maintain the exhibits by conventional means or by electronic means where appropriate.

(e) The Court's Local Rules **may require certain documents/pleadings to be conventionally filed** in paper format rather than e-filed.

(i) Anytime the Local Rules require the conventional filing of a pleading/document unless and until the original paper copy of the pleading/document is received and filed by the Clerk in these cases, the submitting *Registered User* will NOT be deemed to have properly filed the document.

(ii) The burden rests with the *Registered User* to ensure that the Clerk has received the original paper copy of the document prior to any Court dates or filing deadlines.

(iii) The Clerk will list all filings required by Local Rule to be filed by conventional means on the e-filing system's webpage. (Adopted effective July 1, 2019.)

Rule 12. System Use

(a) All documents submitted by e-filing and information provided to the eFlex system by *E-Filers* are subject to the *Tennessee Open Records Act* and may only be designated as confidential or sealed pursuant to *Tennessee Code Annotated, TRCP, Local Rule or Court Order*.

(b) In the event the eFlex system is unavailable, *E-Filer* agrees that time-sensitive documents should be conventionally filed with the Clerk during normal office business hours in order to meet any applicable statutes. At the Court's discretion, the provisions of *T.R.C.P. 6.01* may apply to the extent the Clerk's Office is inaccessible due to unavailability of the eFlex system. (Adopted effective July 1, 2019.)

Rule 13. File Size Limitation for All Electronic Filings

Electronic filings will be limited to a maximum of 20mb per submission.

(a) Any issues with document size restrictions should be referred to the Office of Circuit Court Clerk Support at **(615) 862-4444** and/or by e-mail at efilesupport@nashville.gov. (Adopted effective July 1, 2019.)

Compiler's Notes. This rule 13 was enacted with a subrule (a) but no (b).

DAVIDSON COUNTY CHANCERY COURT ELECTRONIC FILING RULES

SECTION.

- 1. GENERAL PROVISIONS
 - 1.01. Authority.
 - 1.02. Short Title.
 - 1.03. Definitions.
 - 1.04. Application and Scope of the Rules.
 - 1.05. Exclusions.
 - 1.06. Electronic Case File.
- 2. REGISTERED USERS
 - 2.01. Registered Users.
 - 2.02. Registration.
 - 2.03. Duty of Registered User to Update Contact Information.
 - 2.04. User Guide.
- 3. FILING AND SERVICE PROCEDURES

SECTION.

- 3.01. Time and Effect of E-Filing.
- 3.02. Format of Documents.
- 3.03. Payment of Filing Fees.
- 3.04. Signatures.
- 4. ELECTRONIC SERVICE
 - 4.01. Automatic Service by E-Filing System.
 - 4.02. E-Service of Documents Filed by the Court.
- 5. EFFECT OF TECHNICAL FAILURE IN E-FILING
- 6. PRIVACY ISSUES
- 7. EFFECTIVE DATE

SECTION 1. GENERAL PROVISIONS

§ 1.01. Authority

In accordance with Rule 5B of the Tennessee Rules of Civil Procedure and Tennessee Supreme Court Rule 46A, the Chancery Court of Davidson County Tennessee for the Twentieth Judicial District has adopted electronic filing. The electronic filing rules set forth in this Appendix govern the electronic filing and electronic service of pleadings and other papers in the Chancery Court of Davidson County Tennessee. (Amended July 1, 2019, effective September 1, 2019.)

§ 1.02. Short Title

These rules may be cited as the “Davidson County Chancery Court E-Filing Rules”. (Amended July 1, 2019, effective September 1, 2019.)

§ 1.03. Definitions

- (a) “Clerk” means the Clerk & Master of the Davidson County Chancery Court.
- (b) “Court” means the Davidson County Chancery Court and all Parts thereof.
- (c) “Document” means a pleading, motion, application, request, exhibit, brief, memorandum of law, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the Tennessee Rules of Civil Procedure and the Local Rules of Court.
- (d) “Document management system” or “DMS” means a computer system owned and in the custody of the clerk which maintains electronic and scanned paper documents filed in the Court in electronic form.
- (e) “E-file” or “e-filing” means the electronic transmission of documents in the Court using the dedicated e-filing system maintained by the clerk.

(f) “E-filer” means a registered user who submits a document for e-filing through the e-filing system.

(g) “E-filing fee” is a fee charged in connection with electronic filing that is in addition to statutory filing fees. Such fee includes a convenience fee assessed to cover credit card processing fees and may also include a transaction fee or subscription fee per T.C.A § 8-21-401.

(h) “E-filing rules” means the Davidson County Chancery Court Electronic Filing Rules.

(i) “E-filing system” means a web-based system maintained by the clerk for the purpose of providing a means for e-filers to access the DMS and transmit documents to the clerk for filing. E-filers may obtain access to the e-filing system either through an internet access point or by using the clerk’s public access terminal located in the clerk’s office.

(j) “Electronic signature” means a signature line beginning with an “s/”, “/s”, or “/s/” followed by the typewritten name of the signatory.

(k) “E-service” means the electronic transmission of an e-filed document to a party or a party’s attorney through the e-filing system and in accordance with these rules. E-service applies to registered users who have added themselves to the case- specific service contact list. E-service does not include service of process to obtain jurisdiction over persons or property.

(l) “Local rules” mean the rules of the Circuit, Chancery, Criminal, and Probate Courts of Davidson County, Tennessee for the Twentieth Judicial District.

(m) “Party” or “Parties” means any person, including an individual, executor, administrator or other personal representative, or a corporation, partnership, association or any other legal, governmental or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state who is a party in a case pending in the Court and is represented by an attorney or acting pro se.

(n) “Portable Document Format” or “PDF” means the computer file format developed by Adobe Systems Incorporated for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents.

(o) “Public access terminal” means a publicly accessible computer provided by the clerk for the purposes of allowing e-filing and viewing of public electronic court records. The public access terminal shall be located in the clerk’s office, and made available during regular business hours. The clerk’s office may also offer printed copies of electronic court records for applicable copying fees as permitted by relevant statute and court rules.

(p) “Registered user” means any person listed in section 2.01 who has properly registered to e-file documents in the Court.

(q) “System administrator” means the Davidson County employee designated by the clerk to administer the DMS, the e-filing system, and the registration of registered users.

(r) “Terms of use agreement” means that agreement established by the clerk that sets forth the parameters for use of the e-filing system by all registered users.

(s) “Conventional filing” is a process by which a party files a paper document with the clerk.

(t) “Transaction receipt” means an e-mail confirmation that is transmitted to an efiler after an e-filer has submitted a document to the clerk to be filed through the e-filing system. The transaction receipt displays the date and time the document was submitted by the e-filer. The transaction receipt may serve as the e-filer’s proof of filing.

(u) “TRCP” means the Tennessee Rules of Civil Procedure.

(v) “User guide” means the Odyssey eFileTN user guide(s) for using the e-filing system. E-filers should periodically check for updates to the user guide(s) posted on the clerk’s website (<http://www.chanceryclerkandmaster.nashville.gov/>) and the eFileTN website (<http://www.odysseyefiletn.com/>). (Amended July 1, 2019, effective September 1, 2019.)

§ 1.04. Application and Scope of the Rules

These e-filing rules are adopted as an Appendix to the local rules of the Court, and do not supersede or replace any other local rules of the Court. E-filing and e-service of documents is strongly encouraged by this Court. Except as expressly provided herein, the Court shall accept as validly filed all documents that are e-filed through the e-filing system, and a document that can be conventionally filed with the Court may be e-filed. (Amended July 1, 2019, effective September 1, 2019.)

§ 1.05. Exclusions

The Court or the clerk may exclude documents and/or certain types of cases from e-filing. Notice of these excluded documents and/or cases will be provided on the clerk’s website and the e-filing system website. (Amended July 1, 2019, effective September 1, 2019.)

§ 1.06. Electronic Case File

The clerk shall maintain the original and official case file in electronic format for those cases in which documents have been e-filed. (Amended July 1, 2019, effective September 1, 2019.)

SECTION 2. REGISTERED USERS

§ 2.01. Registered Users

The following persons may e-file documents upon completion of the registration requirements of these rules:

- (a) Attorneys licensed to practice law in Tennessee;
- (b) Attorneys admitted or who seek to be admitted pro hac vice;
- (c) Chancellors of the Court and their staff;
- (d) The clerk and all deputy clerks. (Adopted permanently effective September 1, 2019.)

§ 2.02. Registration

Any person listed in section 2.01 who desires to e-file documents in the Court shall register on the e-filing system. Upon receipt of a properly executed terms of use agreement, the e-filing system shall permit the registered user to create

a log-in identification and password to access the e-filing system. Each registered user shall safeguard the registered user's log-in identification and password. Any e-filing shall be presumed authorized by the registered user whose log-in identification and password were used to transmit said e-filing. Except as expressly permitted in these rules, documents shall be e-filed using the log-in identification and password of the registered user who signed the document being filed. Registration on the e-filing system constitutes consent by the registered user to receive electronic service of all documents and electronic notices issued by the Court or the clerk. (Amended July 1, 2019, effective September 1, 2019.)

§ 2.03. Duty of Registered User to Update Contact Information

Registered users shall change their profile maintained in the e-filing system immediately upon any change in the registered user's name, law firm name, delivery address, telephone number, facsimile number, or e-mail address. E-service on an obsolete e-mail address shall constitute valid service on the registered user. (Adopted permanently effective September 1, 2019.)

§ 2.04. User Guide

Registered users will be provided with access to online user guide(s) to assist in e-filing. (Adopted permanently effective September 1, 2019.)

SECTION 3. FILING AND SERVICE PROCEDURES

§ 3.01. Time and Effect of E-Filing

(a) Filed upon transmission. Subject to acceptance by the clerk pursuant to paragraph (b), any document electronically submitted for filing shall be considered filed with the Court when the transmission of the entire document to the Court's e-filing system is completed. Upon receipt of the transmitted document, the e-filing system shall automatically e-mail a transaction receipt to the e-filer, stating that the transmission of the document was completed and also stating the date and time of the document's receipt. The e-filer is responsible for verifying that the Court received and filed the document transmitted. Absent confirmation of receipt, there is no presumption that the Court received and filed the document. The transaction receipt shall serve as proof of filing.

(b) Review by clerk. The clerk may review the document to determine if it conforms to the applicable filing requirements. If the clerk rejects the document for filing because it does not comply with the applicable filing requirements or because any required filing fee has not been paid, the rejected document shall not become part of the official Court record, and the e-filer will receive notification of the rejection. The notice must set forth the reason(s) the document was rejected for filing. In the event the clerk rejects the submitted document following review, the e-filer is allowed up to 48 hours from the notice of rejection to re-file the document to meet necessary filing requirements and deadlines. Notification that the clerk has accepted the document for filing is not required.

(c) "Filed" Stamp. E-filed documents accepted for filing by the clerk shall have a "filed" stamp affixed by the clerk. The clerk's stamp of an e-filed

document must contain the following: “Electronically Filed/[Date] and Time/[Clerk ID].” This “electronically filed” stamp has the same force and effect as a manually affixed “filed” stamp of the clerk.

(d) Time of filing. Any document e-filed by 11:59 p.m. Central Standard Time shall be deemed to be filed on that date, so long as it is accepted by the clerk upon review and otherwise meets all the requirements for filing under the relevant Court rules.

(e) Documents Filed by the Court. The Court may electronically transmit orders, opinions, judgments, and other Court-issued documents through the e-filing system. When a document electronically transmitted by the Court for filing by the clerk requires the signature of the judge(s), clerk, or authorized deputy clerk, the signature may be reflected at the end of the document by means of an electronic signature in the format: “s/ [judge’s/clerk’s/deputy clerk’s name],” followed by the appropriate title (i.e., “Judge,” “Clerk,” “Deputy Clerk”). Any order, opinion, judgment, or other Court-issued document filed electronically without the handwritten signature of the judge(s), clerk, or authorized deputy clerk but containing an approved electronic signature has the same effect as if the judge or clerk had signed a paper copy of the filing. (Amended July 1, 2019, effective September 1, 2019.)

§ 3.02. Format of Documents

(a) All e-filed documents shall be formatted in accordance with the terms of use agreement as well as the TRCP and local rules governing formatting of paper documents, and in such other and further format as the Court may require from time to time.

(b) All original documents that are e-filed shall be prepared through direct conversion from the word processing file to Portable Document Format and not through scanning of the original paper document. Notwithstanding the foregoing sentence, all attachments and exhibits containing photocopies of documents may be scanned into Portable Document Format. E-filed PDF documents shall be text searchable, if possible. (Amended July 1, 2019, effective September 1, 2019.)

§ 3.03. Payment of Filing Fees

Unless excused by statute or the Court, statutory filing fees or other statutorily permitted fees and taxes required to be paid at the time of filing of an e-filed document must be paid with an approved form of electronic payment at the time of e-filing. Use of the e-filing system constitutes three-filer’s consent to process or charge the form of electronic payment supplied. An e-filing fee may be charged to e-file, and is in addition to statutory filing fees. A refund due to improper collection will require the e-filer to contact the clerk’s office directly. A refund will not be made in cash. (Amended July 1, 2019, effective September 1, 2019.)

§ 3.04. Signatures

(a) Registered User’s Signature. A registered user’s use of the assigned log-in name and password to e-file a document serves as that user’s signature on that document for all purposes. The identity of the e-filer must be reflected

at the end of the document by means of an electronic signature, followed by the user's name, business address, telephone number, e-mail address, and number assigned by the Board of Professional Responsibility, if applicable. The requirement that an e-mail address be listed in a registered user's signature is waived if the registered user does not maintain an e-mail address and relies on the public access terminal.

(b) Multiple signatures. An e-filer e-filing a document requiring the signatures of multiple attorneys (e.g., stipulations and agreed orders) must list thereon the names of all other attorney signatories and include their electronic signatures. By e-filing such a document, the e-filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the e-filer has their permission to e-file the document.

(c) Signatures Under Penalty of Perjury and Notarized Signatures. A document required by law to be signed, verified, notarized, acknowledged, sworn to, or made under oath may be e-filed, provided that the declarant or notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned as a PDF in a format that accurately reproduces the original signatures and contents of the document electronically submitted for filing. The original document shall be maintained by the e-filer, and shall be made available, upon reasonable notice, for inspection by another party, other counsel, the clerk or the Court. Parties or their attorneys shall retain originals until final disposition of the case and the expiration of all appeal opportunities. Reference Tennessee's Online Notary Public Act (T.C.A. § 8-16 301 et seq.) for online notarization requirements.

(d) Effect of Signatures on E-Filed Documents. Any filing made under these rules shall bind the signatory as if a paper document were physically signed and conventionally filed. An e-filing therefore shall function as the signatory's attestation to the truthfulness of an e-filed affidavit, declaration, or certification, or as a validly signed document for any other purpose under the TRCP, including TRCP Rule 11 or other Court rule. (Amended July 1, 2019, effective September 1, 2019.)

SECTION 4. ELECTRONIC SERVICE

§ 4.01. Automatic Service by E-Filing System

Upon the acceptance by the clerk of an e-filed document, the e-filing system will automatically generate and send by e-mail a notice of filing along with the document to all registered users who have added themselves to the case-specific service contact list. This automatically generated notice shall constitute proper service of the e-filed document on those registered users and shall have the same legal effect as service of a paper document under the TRCP. Independent service, either by paper or otherwise, need not be made on any registered user receiving e-service. Attorneys and self-represented parties who did not receive e-service must be served by the e-filer through the conventional means of service set forth in the TRCP. (Amended July 1, 2019, effective September 1, 2019.)

§ 4.02. E-Service of Documents Filed by the Court

The clerk’s e-service on registered users who have added themselves to the case-specific service contact list of a notice, order, opinion, or judgment filed by the Court shall constitute proper service and shall satisfy the notice requirements of the TRCP, including the notice and delivery requirements of TRCP Rule 5.02 and Rule 58. (Amended July 1, 2019, effective September 1, 2019.)

SECTION 5. EFFECT OF TECHNICAL FAILURE IN E-FILING

If the e-filing of a document does not occur because of: (1) a technical error in the transmission of the document to the clerk which was unknown to the sending party, (2) a failure to process the electronic document when received by the clerk, (3) rejection of the transmitted document by the Court or clerk, or (4) other technical problems experienced by the e-filer or the clerk, the Court may, upon motion of the e-filing party, enter an order directing that the document be filed nunc pro tunc to the date the document was first attempted to be filed electronically. If the Court directs the filing of the document nunc pro tunc, the Court may also extend the date for filing any response to the delayed filing and may extend the period within which any other right, duty, or other act must be performed. (Amended July 1, 2019, effective September 1, 2019.)

SECTION 6. PRIVACY ISSUES

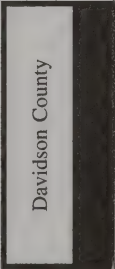
E-filers must be sensitive to filing publicly, not under seal, information that is confidential or protected per state or federal law. E-filers shall refrain from including, or shall redact where inclusion is necessary, information that is confidential or protected per state or federal law from all documents filed publicly with the clerk, including exhibits thereto, unless required by statute or otherwise ordered by the Court. The following are examples of appropriate redaction:

- (a) Social security number.If a social security number must be included in a document, only the last four digits of that number must be used.
- (b) Date of birth.If an individual’s date of birth must be included in a document, only the year must be used.
- (c) Financial account number.If a financial account number is relevant, only the last four digits of the number must be used.

Compliance with this rule is the sole responsibility of the e-filer. The clerk will not review each document for redaction. (Amended July 1, 2019, effective September 1, 2019.)

SECTION 7. EFFECTIVE DATE

These Davidson County Chancery Court Electronic Filing Rules are effective as of September 1, 2019, and replace the Interim Davidson County Chancery Court Electronic Filing Rules. (Amended July 1, 2019, effective September 1, 2019.)



Index to Local Rules of Davidson County

A

ABORTION.

Consent.

Extraordinary relief, Davidson Juv 13.

ACCOUNTS AND ACCOUNTING.

Probate cases, Davidson Local 39 §39.15.

Interest bearing accounts, Davidson Local 39 §39.17.

ADMINISTRATIVE AGENCY REVIEW,

Davidson Local 25.

Brief, Davidson Local 25 §§25.01, 25.02.

Expedited procedure, Davidson Local 25 §25.05.

Oral argument, Davidson Local 25 §§25.03, 25.04.

ADOPTION, Davidson Local 38.

Attendance of adoptive child, Davidson Local 38 §38.04.

Filing complaint, Davidson Local 38 §38.01.

Notice of hearing, Davidson Local 38 §38.05.

Presentation of testimony, Davidson Local 38 §38.03.

Setting case.

Documentary requirements, Davidson Local 38 §38.02.

ADOPTION OF RULES, Davidson Local 1 §1.01.

APPEALS.

Administrative agency decisions, Davidson Local 25.

General sessions appeals in circuit court, Davidson Local 20.

APPEARANCES.

Attorneys at law.

Entry of appearance, Davidson Local 5 §5.01.

Civil cases.

Conduct of counsel, Davidson GenSess Civ §2.03.

Entry of appearance, Davidson GenSess Civ §2.01.

Motions hearings, Davidson Local 26 §26.08.

Withdrawal, Davidson GenSess Civ §2.02.

Criminal cases.

Conduct of counsel, Davidson GenSess Crim §2.03.

Entry of appearance, Davidson GenSess Crim §2.01.

Failure to appear at motion hearing, Davidson Local 12 §12.02.

Withdrawal, Davidson GenSess Crim §2.02.

APPEARANCES —Cont'd

Prison inmate as witness, Davidson Local 11 §11.04, Davidson Local 28 §28.04.

Probate cases.

Pro se appearance, Davidson Local 39 §39.01.

APPLICABILITY OF RULES.

Civil rules, Davidson GenSess Civ §1.02.

Criminal rules, Davidson GenSess Crim §1.02.

Probate rules.

Adversary proceedings as civil actions, Davidson Local 39 §39.09.

Rule of practice, Davidson Local 1 §1.02.

ARRAIGNMENT.

Pretrial motions.

Notice of deadline for filing, Davidson Local 14 §14.01.

Settlement date and deadline.

Assignment, Davidson Local 14 §14.02.

ASSIGNMENT OF CASES, Davidson Local 3.

Circuit and chancery courts, Davidson Local 27 §§27.01 to 27.07.

Extraordinary relief, Davidson Local 19 §19.01.

Hearing in same division or part, Davidson Local 3 §3.02.

ATTORNEYS AT LAW.

Appearances.

See APPEARANCES.

Civil cases.

Orders and judgments.

Preparation and submission, Davidson Local 33 §33.02.

Conduct of counsel, Davidson Local 5 §5.04.

Civil cases, Davidson GenSess Civ §2.03.

Court-appointed counsel.

Delinquency and dependent and neglected cases.

Requirements, Davidson Juv 18.

Criminal cases.

Appointments.

Acceptance, criteria, Davidson GenSess Crim §2.01.

Orders and judgments.

Preparation and submission, Davidson Local 15 §15.02.

Dress code.

Civil rules, Davidson GenSess Civ §1.04.

Criminal rules, Davidson GenSess Crim §1.04.

Ex parte judicial communications, Davidson Local 5 §5.06.

Pleadings.

Signature of counsel, Davidson Local 6 §6.03.

ATTORNEYS AT LAW —Cont'd

Probate cases, Davidson Local 39 §39.01.

Professionalism.

Lawyer's Creed of Professionalism,
Davidson Local 5 §5.04.

Professionalism creed.

NBA (Nashville Bar Association)
professionalism committee lawyer's
creed of professionalism, Davidson Juv
2a.

Withdrawal of counsel, Davidson Local 5
§5.02.

ATTORNEYS' FEES, Davidson Local 5
§5.05.

Civil cases.

Elements of judgments, Davidson GenSess
Civ §9.02.

Probate cases, Davidson Local 39 §39.14.

AUDIO/VISUAL RECORDINGS.

Court proceedings, Davidson Local 8.

**Notice to adverse party of intent to use
at trial**, Davidson Local 22 §22.06,
Davidson Local 29 §29.02.

B

BAIL AND RECOGNIZANCE.

Bonding companies, Davidson Local 16,
Davidson Local 16 §16.01.

Filing local rules of practice, Davidson
Local 16 §16.02.

Detention without bond, Davidson
GenSess Crim §12.01.

Duration of capias, Davidson GenSess Crim
§12.02.

Information intake sheets, Davidson
GenSess Crim §12.04.

**Surrender of defendant by bond
company**, Davidson GenSess Crim
§12.03.

BIRTH CERTIFICATES.

Adoption.

Required for setting case, Davidson Local
38 §38.02.

BONDING COMPANIES, Davidson Local 16
§16.01.

Filing local rules of practice, Davidson
Local 16 §16.02.

BRIEFS.

Administrative agency review, Davidson
Local 25 §§25.01, 25.02.

Civil cases.

Nonjury trials, Davidson Local 29 §29.03.
Post-hearing briefs in civil cases, Davidson
GenSess Civ §3.03.

Pretrial motions, Davidson Local 26 §26.04.

Criminal cases.

Pretrial motions, Davidson Local 12 §12.04.

C

CASA.

Appointment, Davidson Juv 9.

**CASES PURSUANT TO T.C.A. SECTION
40-35-313**, Davidson GenSess Crim §9.03.

**CELL PHONES AND OTHER NOISE
GENERATING DEVICES.**

Juvenile rules, Davidson Juv 2.

Restrictions, Davidson Local 5 §5.08.

CHANCERY COURT ELECTRONIC

FILING RULES, Davidson Chancery
E-filing 1 to Davidson Chancery E-filing
7.

See **ELECTRONIC FILING (E-FILING),
CHANCERY COURT.**

CHILDREN AND MINORS.

Adoption hearings.

Attendance of adoptive child, Davidson
Local 38 §38.04.

**Law enforcement operations, use of
child.**

Extraordinary relief, Davidson Juv 13.

Settlements.

Presentation of settlements, Davidson Local
23 §23.04.

Victims of crime.

Criminal injuries compensation.
Extraordinary relief, Davidson Juv 13.

CITATION OF RULES, Davidson Local 1
§1.05.

CLASS ACTIONS, Davidson Local 6 §6.05,
Davidson Local 26 §26.14.

CLERKS OF COURT.

Assignment of cases, Davidson Local 3
§3.01.

Civil cases.

Filing of papers or electronic filing with
clerk, Davidson GenSess Civ §3.01.

Orders and judgments.

Preparation and submission, Davidson
Local 33 §33.01.

Subpoenas.

Issuance, Davidson Local 28 §28.01.

Criminal cases.

Orders and judgments.

Preparation and submission, Davidson
Local 15 §15.01.

Subpoenas.

Issuance, Davidson Local 11 §11.01.

Custody of files, Davidson Local 7 §7.01.

Electronic filing (e-filing).

Civil cases.

Filing of papers or electronic filing with
clerk, Davidson GenSess Civ §3.01.

Filing with or submitting papers to clerk,
Davidson Local 6 §6.01.

CLERKS OF COURT —Cont'd
Filing with or submitting papers to clerk, Davidson Local 6 §6.01.

CLOSING OF ESTATE.
Probate, Davidson Local 39 §39.15.

COMPANION CASE FILINGS.
Civil cases, Davidson GenSess Civ §3.02.

CONDUCT OF COUNSEL, Davidson Local 5 §5.04.

CONFIDENTIALITY.
Electronic filing (E-filing), chancery court.
Exclusion of personal identifiers from publicly-filed documents, Davidson Chancery E-filing 6.

Redaction of confidential information that is not required in filings, Davidson Local 6 §6.06.

CONSERVATORSHIPS.
Probate cases, Davidson Local 39 §§39.05, 39.14.
Fiduciary fee, Davidson Local 39 §39.14.

CONSOLIDATION OF CASES, Davidson Local 3 §3.06.

CONSTRUCTION OF RULES.
Juvenile rules, Davidson Juv 1.

CONTINUANCES, Davidson Juv 8.

Chancery and circuit cases, Davidson Local 27 §27.05.

Civil cases, Davidson GenSess Civ §6.01.

Criminal cases, Davidson GenSess Crim §5.01, Davidson Local 13 §13.02.

COURT COSTS, Davidson Juv 4.

COURT REPORTERS.
Civil cases, Davidson Local 32.

Masters, reference to.
Parties' responsibilities as to court reporters, Davidson Local 21 §21.03.

COURTROOM DECORUM, Davidson Juv 2.

COURT SESSIONS, Davidson Local 4.

D

DEAF PERSONS.
Hearing/sign interpreters.
Civil cases, Davidson GenSess Civ §11.02.
Criminal cases, Davidson GenSess Crim §13.02.

DEATH CERTIFICATES.
Adoption.
Required for setting case, Davidson Local 38 §38.02.

DECEDENTS' ESTATES, Davidson Local 39 §39.03.

DEFAULT JUDGMENTS.
Liquidated damages.
Motion with certificate, Davidson Local 26 §26.15.
Order with certificate, Davidson Local Appx Forms.

DEFINITIONS, Davidson Local 1 §1.04.

Adversary proceedings.
Probate matters, Davidson Local 39 §39.02.

Clerk.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Conventional filings.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Conventional service.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Court.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

DMS.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Document.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Document management system.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

E-file.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

E-filers.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

E-filing.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.
Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

E-filing fees.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

E-filing rules.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

E-filing system.
Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

DEFINITIONS —Cont'd

eFlex.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Electronic filing.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Electronic notary.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Electronic service.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Electronic signatures.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

E-notary.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

E-served.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

E-service, Davidson Local 26 §26.06.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Interested parties.

Probate matters, Davidson Local 39 §39.02.

Local rules.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Notice.

Probate matters, Davidson Local 39 §39.02.

Parties.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

PDF.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Personal service, Davidson Local 26 §26.06.

Portable document format.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Public access terminals.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Registered users.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Electronic filing (E-filing), circuit, probate and general sessions-civil courts, Davidson Civil E-filing 2.

Service of process.

Probate matters, Davidson Local 39 §39.02.

Systems administrators.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

DEFINITIONS —Cont'd

Terms of use agreement.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

Transaction receipts.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

TRCP.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

User guide.

Electronic filing (E-filing), chancery court, Davidson Chancery E-filing 1.03.

DELAY OF CIVIL PROCEEDINGS.

Absence or tardiness of court reporter, Davidson Local 32.

DELINQUENCY PROCEEDINGS.

Attorneys at law.

Court-appointed counsel.

Requirements for counsel in delinquency and dependent and neglected cases, Davidson Juv 18.

Motions, Davidson Juv 16.

Restitution, Davidson Juv 16.

DEPENDENT AND NEGLECTED CASES.

Attorneys at law.

Court-appointed counsel.

Requirements for counsel in delinquency and dependent and neglected cases, Davidson Juv 18.

DEPOSITIONS.

Adoption.

Presentation of testimony, Davidson Local 38 §38.03.

Agreements to furnish documents,

Davidson Local 22 §22.11.

Cell phones and other noise generating devices required to be off, Davidson

Local 5 §5.08.

Smoking during the taking, Davidson

Local 5 §5.07.

Victims in juvenile court proceedings when criminal charge pending.

Motions, Davidson Juv 10.

DISCOVERY.

Civil cases, Davidson Local 22.

Completion date, Davidson Local 22 §22.03.

Extension of time for responses, Davidson Local 22 §22.02.

Filing requirements, Davidson Local 22 §22.01.

Motion for protective order, Davidson Local 22 §22.10.

Motion to compel, Davidson Local 22 §22.09, 22.11.

Motion to quash, Davidson Local 22 §22.10.

Resolving discovery disputes, Davidson Local 22 §22.08, 22.12.

Service of request, Davidson Local 22 §22.13.

Criminal cases, Davidson Local 10 §§10.01,

10.02.

DISMISSAL OF CIVIL CASE, Davidson
GenSess Civ §8.01, Davidson Local 18
§18.02.

**DISPOSITIVE MOTIONS IN CIVIL
CASES.**

Time to schedule and hear, Davidson Local
26 §26.01.

DIVORCE, Davidson Local 37.

Contested cases, Davidson Local 37 §37.02.
Certificate of readiness for trial, Davidson
Local Appx Forms.

Hearings.

Domestic relations order governing time for
filing motions prior to hearing date,
Davidson Local 37 §37.05.

Injunctive relief, Davidson Local 19 §19.05.

Parties.

Terms for designations, Davidson Local 37
§37.03.

Pendente lite relief, Davidson Local 37
§37.04.

Uncontested case, Davidson Local 37
§37.01.

DOCKETS.

Civil cases.

Docket calls, Davidson GenSess Civ §4.01,
Davidson Local 18 §18.03.

Hearing location, Davidson GenSess Civ
§10.01.

Motions for hearing and disposition,
Davidson Local 26 §26.05.

Setting of case, Davidson GenSess Civ
§5.01.

Criminal cases.

Continuances, Davidson GenSess Crim
§5.01.

Set-aside orders, Davidson GenSess Crim
§§6.01, 6.02.

Setting, Davidson GenSess Crim §4.01.

DOMESTIC RELATIONS.

Hearings.

Domestic relations order governing time for
filing motions prior to hearing date,
Davidson Local 37 §37.05.

Injunctive relief, Davidson Local 19 §19.05.

DORMANT CASES, Davidson Juv 14.

DRESS CODE.

Civil rules, Davidson GenSess Civ §1.04.

Criminal rules, Davidson GenSess Crim
§1.04.

Juvenile rules, Davidson Juv 2.

DRIVER'S LICENSE.

Restricted license, Davidson GenSess Crim
§16.01.

E

**ELECTRONIC FILING (E-FILING),
CHANCERY COURT**, Davidson

Chancery E-filing 1 to Davidson Chancery
E-filing 7.

Applicability of rules, Davidson Chancery
E-filing 1.04.

Authority to adopt E-filing rules,
Davidson Chancery E-filing 1.01.

Case file.

Maintenance of electronic case file,
Davidson Chancery E-filing 1.06.

Clerks of court.

Civil cases.

Filing of papers or electronic filing with
clerk, Davidson GenSess Civ §3.01.

Filing with or submitting papers to clerk,
Davidson Local 6 §6.01.

Definitions, Davidson Chancery E-filing
1.03.

Effective date of rules, Davidson Chancery
E-filing 7.

Effect of E-filing, Davidson Chancery
E-filing 3.01.

**Exclusion of documents or certain of
cases**, Davidson Chancery E-filing 1.05.

Fees.

Payment of filing fees, Davidson Chancery
E-filing 3.03.

Format of documents, Davidson Chancery
E-filing 3.02.

Privacy.

Exclusion of personal identifiers from
publicly-filed documents, Davidson
Chancery E-filing 6.

Registered users.

Contact information.

Updates, duty of user, Davidson
Chancery E-filing 2.03.

Defined, Davidson Chancery E-filing 1.03.

Eligibility for registration, Davidson
Chancery E-filing 2.01.

Requirement of registration, Davidson
Chancery E-filing 2.02.

User guide.

Access to user guide, Davidson Chancery
E-filing 2.04.

Defined, Davidson Chancery E-filing 1.03.

Scope of rules, Davidson Chancery E-filing
1.04.

Service of process.

Electronic service.

Automatic service by E-filing system,
Davidson Chancery E-filing 4.01.

Court filing of documents, E-service,
Davidson Chancery E-filing 4.02.

**ELECTRONIC FILING (E-FILING),
CHANCERY COURT** —Cont'd
Short title, Davidson Chancery E-filing 1.02.
Signatures, Davidson Chancery E-filing 3.04.
Technical failures.
 Effect, Davidson Chancery E-filing 5.
Time of E-filing, Davidson Chancery E-filing 3.01.

**ELECTRONIC FILING (E-FILING),
CIRCUIT, PROBATE AND GENERAL
SESSIONS-CIVIL COURTS**, Davidson
 Civil E-filing 1 to Davidson Civil E-filing 13.

Conventional filing.
 Conversion to electronic format, Davidson
 Civil E-filing 11.
 Defined, Davidson Civil E-filing 2.
 Use when system unavailable, Davidson
 Civil E-filing 12.

Definitions, Davidson Civil E-filing 2.

Delivery.
 Electronic notification and delivery of
 documents, Davidson Civil E-filing 8.

Effect of filing, Davidson Civil E-filing 9.

**Electronic notification and delivery of
documents**, Davidson Civil E-filing 8.

Fees.
 Filing fees.
 Payment, Davidson Civil E-filing 10.

Format of documents, Davidson Civil
 E-filing 7.

Limitation on file size, Davidson Civil
 E-filing 13.

Registered users.
 Account maintenance obligations, Davidson
 Civil E-filing 6.
 Agreement.
 Registered user agreement, Davidson
 Civil E-filing 6.
 Authorized registered users, Davidson Civil
 E-filing 5.
 Defined, Davidson Civil E-filing 2.

Scope of provisions, Davidson Civil E-filing 3.

Short title, Davidson Civil E-filing 1.

System use.
 Conventional filing to be used when system
 unavailable, Davidson Civil E-filing 12.
 Open records act, applicability, Davidson
 Civil E-filing 12.

Time of filing, Davidson Civil E-filing 9.

**Warranty as to accurate and current
information.**
 No warranty given, Davidson Civil E-filing 4.

EMERGENCIES.
Extraordinary relief, Davidson Juv 13.

EXHIBITS.
Copies of exhibits for court and parties,
 Davidson Juv 5.

Disposition by clerk, Davidson Local 7
 §7.01.

EXHIBITS —Cont'd
Readiness, certificate of.
 Inclusion of exhibit list, Davidson Juv 11.

EX PARTE PROCEEDINGS.
Interlocutory relief.
 Criminal cases.
 Therapeutic courts, drug courts, mental
 health courts, etc.
 Ex parte communications, Davidson
 Local 9 §9.02.

EXPUNGEMENT OF RECORDS.
Dismissed criminal cases, Davidson
 GenSess Crim §§4.01, 9.01.

EXTRAORDINARY RELIEF, Davidson Juv
 13.

Civil cases, Davidson Local 19 §§19.01 to
 19.05.

Criminal cases, Davidson Local 9 §9.01.
 Ex parte communications, Davidson Local 9
 §9.02.

F

FEES.
**Electronic filing (E-filing), chancery
court.**
 Payment of filing fees, Davidson Chancery
 E-filing 3.03.

**Electronic filing (e-filing), circuit,
probate and general sessions-civil
courts.**
 Filing fees.
 Payment, Davidson Civil E-filing 10.

Filing fees, Davidson Juv 4.

FILING.
**Electronic filing (E-filing), chancery
court**, Davidson Chancery E-filing 1 to
 Davidson Chancery E-filing 7.
 See **ELECTRONIC FILING (E-FILING),
CHANCERY COURT.**

**Electronic filing (E-filing), circuit,
probate and general sessions-civil
courts**, Davidson Civil E-filing 1 to
 Davidson Civil E-filing 13.
 See **ELECTRONIC FILING (E-FILING),
CIRCUIT, PROBATE AND GENERAL
SESSIONS-CIVIL COURTS.**

**FORFEITURE OR SEIZURE OF
PROPERTY.**
Warrants, Davidson GenSess Crim §15.01.

FORMER RULES VOID.
Civil rules, Davidson GenSess Civ §1.01.
Criminal rules, Davidson GenSess Crim
 §1.01.

**FOSTER CARE REVIEW BOARD
PROCEEDINGS.**
Applicable provisions, Davidson Juv 17a.
Attendance, Davidson Juv 17d.
Conducting review, Davidson Juv 17e.
Documentation, Davidson Juv 17c.

FOSTER CARE REVIEW BOARD**PROCEEDINGS —Cont'd**

Extension of foster care, Davidson Juv 17f.
Notice, Davidson Juv 17b.

Documentation, Davidson Juv 17c.

Quorum, Davidson Juv 17d.

Scheduling of proceedings, Davidson Juv 17b.

FUNDS PAID INTO COURT, Davidson Local 34.

G

GUARDIAN AD LITEM, Davidson Juv 9.

GUARDIANSHIPS.

Probate cases, Davidson Local 39 §39.06.
 Fiduciary fees, Davidson Local 39 §39.14.
 Guardian ad litem, Davidson Local 39 §39.10.

H**HABEAS CORPUS.**

Clerk's duties upon filing, Davidson Local 7 §7.03.

HEARINGS.

Divorce or other domestic relations cases.

Domestic relations order governing time for filing motions prior to hearing date, Davidson Local 37 §37.05.

Domestic relations cases.

Injunctions, Davidson Local 19 §19.05.

Extraordinary interlocutory relief, Davidson Local 9 §9.01.

Interlocutory relief, Davidson Local 19 §19.03.

Probate proceedings.

Elective share, year's support, homestead, and exempt property proceedings.
 Prerequisites to final hearing, Davidson Local 39 §39.12.

Scheduling, Davidson Juv 8.

Temporary injunctions, Davidson Local 19 §19.04.

HEARING/SIGN INTERPRETERS.

Civil cases, Davidson GenSess Civ §11.02.

Criminal cases, Davidson GenSess Crim §13.02.

HIPAA.

Subpoenas for medical records, Davidson Local 28 §28.05.

I**INJUNCTIONS.****Administrative agency review.**

Expedited procedures involving prior restraint, Davidson Local 25 §25.05.

Civil cases, Davidson Local 19 §19.04.

INJUNCTIONS —Cont'd**Domestic relations cases.**

Hearings, Davidson Local 19 §19.05.

Restraining orders, Davidson Juv 13.

Extraordinary relief in civil cases, Davidson Local 19 §19.02.

Temporary injunctions.

Hearings, Davidson Local 19 §19.04.

INTERLOCUTORY RELIEF.

Civil cases, Davidson Local 19 §19.03.

Criminal cases, Davidson Local 9 §9.01.

Ex parte communications, Davidson Local 9 §9.02.

INTERPRETERS.**Civil cases.**

Hearing/sign interpreters, Davidson GenSess Civ §11.02.

Language interpreters, Davidson GenSess Civ §11.01.

Criminal cases.

Hearing impaired interpreters, Davidson GenSess Crim §13.02.

Hearing impaired persons at night court, Davidson GenSess Crim §13.03.

Language interpreters, Davidson GenSess Crim §13.01.

INTERROGATORIES, Davidson Local 22 §22.04.

Adoption.

Presentation of testimony, Davidson Local 38 §38.03.

Jury interrogatories, Davidson Local 31 §31.04.

INVESTMENTS.

Probate matter, Davidson Local 39 §39.17.

J**JUDGES.****Interchange of judges.**

Assignment of cases, Davidson Local 3 §3.03.

Presiding judge.

Administration of trial courts, Davidson Local 2.

JUDGMENTS AND DECREES.

See **ORDERS**.

JUDICIAL ADMINISTRATION.

Presiding judge, Davidson Local 2.

JURY.**Audio/visual recordings.**

Notice to adverse party of intent to use at trial, Davidson Local 22 §22.06,
 Davidson Local 29 §29.02.

Challenges, Davidson Local 31 §31.03.

Demand for jury trial, Davidson Local 31 §31.01.

Documentary evidence.

Copies for jurors, Davidson Local 31 §31.05.

Instructions to jurors, Davidson Local 31 §31.04.

JURY —Cont'd

Number of jurors, Davidson Local 31 §31.02.

Setting cases for trial, circuit and chancery courts.

Administration and assignment, Davidson Local 27 §27.06.

L

LANGUAGE INTERPRETERS.

Civil cases, Davidson GenSess Civ §11.01.

Criminal cases, Davidson GenSess Crim §13.01.

M

MARRIAGE LICENSES.

Adoption.

Required for setting case, Davidson Local 38 §38.02.

Age waivers.

Extraordinary relief, Davidson Juv 13.

MASTERS.

References to master, Davidson Local 21, Davidson Local 22 §22.12.

Discovery dispute, Davidson Local 22 §22.12.

MEDIATION SERVICES, Davidson Juv 12.

MEDICAL RECORDS.

Subpoenas for medical records, Davidson Local 28 §28.05.

MEMORANDA OF LAW.

Civil cases.

Post-hearing briefs or memoranda of law in civil cases, Davidson GenSess Civ §3.03.

MENTAL HEALTH EVALUATIONS.

Criminal cases.

Orders for, Davidson Local 15 §15.04.

MINORS.

Settlements, Davidson GenSess Civ §9.03.

MODIFICATION OF RULES.

Waiver, Davidson Juv 19.

MOTIONS, Davidson Local 39 §39.13.

Civil cases, Davidson Local 26.

Agreed orders, Davidson Local 26 §26.10.

Default judgments.

Liquidated damages.

Motion with certificate, Davidson Local 26 §26.15.

Discovery.

Compelling discovery, Davidson Local 22 §22.11, Davidson Local 26 §26.13.

Protective orders, Davidson Local 22 §22.10.

Quash subpoenas, Davidson Local 22 §22.10.

Docketing for hearings and disposition, Davidson Local 26 §§26.05, 26.07.

MOTIONS —Cont'd

Civil cases —Cont'd

Hearing on motions, Davidson Local 26 §26.11.

Notice of hearing, Davidson Local 26 §26.03.

Time for hearing, Davidson Local 26 §§26.01, 26.02.

Motions in limine, Davidson Local 26 §26.12.

Notice of hearing on motions, Davidson Local 26 §26.03.

Personal service, defined, Davidson Local 26 §26.06.

Postponement of motions, Davidson Local 26 §26.09.

Pretrial motions, Davidson Local 26 §§26.01, 26.04.

Special setting, Davidson Local 26 §26.07.

Striking or postponement of motions, Davidson Local 26 §26.09.

Summary judgment motions, Davidson Local 26 §26.03.

Time for filing and hearing, Davidson Local 26 §§26.01, 26.02.

Criminal cases.

Failure to appear at hearing, Davidson Local 12 §12.02.

Motions in limine, Davidson Local 10 §10.03, Davidson Local 12 §12.03.

Pretrial motions, Davidson Local 12 §12.01, Davidson Local 14 §14.01.

Deadline for filing, Davidson Local 14 §14.01.

Statement of facts and legal authority, Davidson Local 12 §12.04.

Trial use of audio/video recordings, Davidson Local 10 §10.03.

Delinquency proceedings, Davidson Juv 10.

Depositions.

Victims in juvenile court proceedings when criminal charge pending, Davidson Juv 10.

Filing records under seal, Davidson Local 7 §7.02.

Transfer of cases, Davidson Local 3 §3.05.

MOTIONS IN LIMINE.

Civil cases, Davidson Local 26 §26.12, Davidson Local 30.

Criminal cases, Davidson Local 10 §10.03, Davidson Local 12 §12.03.

N

NAME CHANGES, Davidson Local 39 §39.08.

NONSUITS, Davidson GenSess Civ §7.01.

NO-SMOKING POLICY, Davidson Local 5 §5.07.

Civil cases, Davidson GenSess Civ §13.01.

NO-SMOKING POLICY —Cont'd

Criminal rules, Davidson GenSess Crim §14.01.

O**OBJECTIONS.****Civil cases.**

Discovery, Davidson Local 22 §22.07.
Proposed orders and judgments, Davidson Local 33 §33.02.

Criminal cases.

Audio/video recordings, Davidson Local 10 §10.03.
Proposed orders and judgments, Davidson Local 15 §15.03.

Master's report, Davidson Local 21 §21.04.

OFFICE HOURS, Davidson Juv 3.

ORDERS.**Civil cases**, Davidson Local 33.

Agreed judgments, Davidson GenSess Civ §9.04.
Elements of judgments, Davidson GenSess Civ §9.02.
Payment of judgments, Davidson Local 33 §33.04.
Protection, orders of, Davidson GenSess Civ §12.01.
Satisfaction of judgments, Davidson Local 33 §33.04.
Taxing of court costs, Davidson Local 33 §33.03.

Criminal cases, Davidson Local 15.

Expungement of records.
Cases pursuant to T.C.A. section 40-35-313, Davidson GenSess Crim §9.03.
Dismissed cases, Davidson GenSess Crim §9.01.
Retired cases, Davidson GenSess Crim §9.02.
Set-aside orders, Davidson GenSess Crim §§6.01, 6.02.

Juvenile proceedings, Davidson Juv 15.

Probate cases, Davidson Local 39 §39.16.

Reference to master, Davidson Local 21 §21.01.

Restraining orders, Davidson Juv 13.

P

PARENTING PLANS, Davidson Juv 12.

PARTIES.**Dress code.**

Civil rules, Davidson GenSess Civ §1.04.
Criminal rules, Davidson GenSess Crim §1.04.

PATERNITY PROCEEDINGS.**Settlements.**

Presentation of settlements, Davidson Local 23 §23.04.

PENDENTE LITE RELIEF.

Divorce, Davidson Local 37 §37.04.

PETITION TO SUSPEND OR MODIFY SENTENCE, Davidson GenSess Crim §10.01.

PLEA AGREEMENTS.

Criminal cases, Davidson GenSess Crim §11.01.

Notice to victims, Davidson Local 14 §14.03.

PLEADINGS.

Civil jury demand, Davidson Local 31 §31.01.

Class actions, Davidson Local 6 §6.05.

Confidentiality.

Redaction of confidential information that is not required in filings, Davidson Local 6 §6.06.

Counsel of record.

No counsel entered, Davidson Local 5 §5.03.

Divorce cases.

Designation of parties, Davidson Local 37 §37.03.

Form of pleading, Davidson Juv 5.

Pseudonym filings, Davidson Local 6 §6.04.

Public inspection, Davidson Local 7 §7.02.

Reference to master.

Statements of claim and responses, Davidson Local 21 §21.02.

Service, Davidson Juv 6.

Signature of counsel or pro se party, Davidson Local 6 §6.03.

Withdrawal of papers and records, Davidson Local 7 §7.01.

POSTCONVICTION RELIEF.

Clerk's duties upon filing, Davidson Local 7 §7.03.

POSTPONEMENT OF CIVIL PROCEEDINGS.

Absence or tardiness of court reporter, Davidson Local 32.

PRETRIAL PROCEDURE.

Civil cases, Davidson Local 29.

PRISON INMATES.**Civil cases.**

Subpoena for appearance in court, Davidson Local 28 §28.04.

Criminal cases.

Subpoena for appearance in court, Davidson Local 11 §11.04.

PROBATE PROCEEDINGS, Davidson Local 39.

Accountings, Davidson Local 39 §39.15.

Adversary proceedings, Davidson Local 39 §39.09.

Attorneys at law, Davidson Local 39 §39.01.

Attorneys' fees, Davidson Local 39 §39.14.

Clerk's investment of funds, Davidson Local 39 §39.17.

Closing of estates, Davidson Local 39 §39.15.

PROBATE PROCEEDINGS —Cont'd
"Common form" proceedings, Davidson Local 39 §39.03.
Conservatorships, Davidson Local 39 §§39.05, 39.07, 39.14.
Definitions, Davidson Local 39 §39.02.
Elective share petitions, Davidson Local 39 §39.12.
Estates of decedents, Davidson Local 39 §39.03.
Exempt property petitions, Davidson Local 39 §39.12.
Fiduciary fee, Davidson Local 39 §39.14.
Guardianships, Davidson Local 39 §§39.06, 39.07, 39.10, 39.14.
 Guardian ad litem, Davidson Local 39 §39.10.
Holographic will proceedings, Davidson Local 39 §39.03.
Homestead petitions, Davidson Local 39 §39.12.
Intestate estate administration, Davidson Local 39 §39.03.
Motions, Davidson Local 39 §39.13.
Name changes, Davidson Local 39 §39.08.
Orders and decrees, Davidson Local 39 §39.16.
Sale of real estate, Davidson Local 39 §39.07.
Setting hearings, Davidson Local 39 §39.11.
Small estate administration, Davidson Local 39 §39.03.
"Solemn form" proceedings, Davidson Local 39 §39.03.
Trusts, Davidson Local 39 §§39.04, 39.14.
Year's support petitions, Davidson Local 39 §39.12.

PROFESSIONALISM CREED.
NBA (Nashville Bar Association) professionalism committee lawyer's creed of professionalism, Davidson Julv 2a.

PRO SE APPEARANCE.

Pleadings.
 Signature of counsel or pro se party, Davidson Local 6 §6.03.
Probate case, Davidson Local 39 §39.01.

PROTECTIVE ORDERS.

Petitions for orders of protection, Davidson GenSess Civ §12.01.

PSEUDONYM FILINGS, Davidson Local 6 §6.04.

PURPOSE OF RULES, Davidson Julv 1, Davidson Local 1 §1.03.

R

READINESS, CERTIFICATE OF, Davidson Julv 11.

RECORD OF PROCEEDINGS, Davidson Julv 7.

Audio-visual recording of court proceedings, Davidson Local 8.

Public access, Davidson Local 7 §7.02.

Reference to master, Davidson Local 21 §21.03.

REDACTION.

Confidentiality.

Redaction of confidential information that is not required in filings, Davidson Local 6 §6.06.

REQUESTS FOR ADMISSIONS, Davidson Local 22 §22.05.

RESTITUTION, Davidson Julv 16.

RESTRAINING ORDERS, Davidson Julv 13.

Extraordinary relief in civil cases, Davidson Local 19 §19.02.

RETIRED CRIMINAL CASES, Davidson GenSess Crim §8.01.

Expungement, Davidson GenSess Crim §9.02.

S

SEAL, PAPERS, DOCUMENTS OR FILES UNDER.

Shielding from public inspection, Davidson Local 7 §7.02.

Standards for sealing documents, Davidson Local 7 §7.02.

SENTENCING.

Petition to suspend or modify, Davidson GenSess Crim §10.01.

SERVICE OF PROCESS.

Certificate of service, Davidson Julv 6, Davidson Local 6 §6.02.

Civil cases, Davidson Local 22 §22.13.
 Personal service, defined, Davidson Local 26 §26.06.

Electronic filing (E-filing).

Chancery court, Davidson Chancery E-filing 1 to Davidson Chancery E-filing 7.

See **ELECTRONIC FILING (E-FILING), CHANCERY COURT.**

Circuit, probate and general sessions-civil courts, Davidson Civil E-filing 1 to Davidson Civil E-filing 13.

See **ELECTRONIC FILING (E-FILING), CIRCUIT, PROBATE AND GENERAL SESSIONS-CIVIL COURTS.**

Electronic service.

Automatic service by E-filing system, Davidson Chancery E-filing 4.01.

Court filing of documents, E-service, Davidson Chancery E-filing 4.02.

Readiness, certificate of, Davidson Julv 11.

SESSIONS OF COURT, Davidson Julv 3.

SET-ASIDE ORDERS.

Criminal cases, Davidson GenSess Crim §§6.01, 6.02.

SETTING CASES FOR TRIAL, CIRCUIT AND CHANCERY COURTS.

Administration of cases, Davidson Local 27 §27.01.

Certifying cases ready when set, Davidson Local 27 §27.03.

Continuances, Davidson Local 27 §27.05.

Jury cases.

Administration and assignment, Davidson Local 27 §27.06.

Method, Davidson Local 27 §27.02.

Nonjury circuit cases.

Central assignment, Davidson Local 27 §27.07.

Workers' compensation benefit review conference, Davidson Local 27 §27.04.

SETTLEMENTS.

Civil cases, Davidson Local 23.

Awards of expenses, Davidson Local 23 §23.02.

Court approval, Davidson Local 23 §§23.03, 23.04.

Discussions, Davidson GenSess Civ §9.01.

Judicial settlement conference, Davidson Local 23 §23.01.

Minors as parties, Davidson GenSess Civ §9.03.

Notice requirements, Davidson Local 23 §23.05.

Presentation, Davidson Local 23 §23.04.

Criminal cases.

Date and deadline, Davidson Local 14 §14.02.

SIGN LANGUAGE.

Hearing/sign interpreters.

Civil cases, Davidson GenSess Civ §11.02.

Criminal cases, Davidson GenSess Crim §13.02.

SLOW PAY MOTIONS.

Dismissal, Davidson GenSess Civ §8.01.

SPECIAL EXPEDITED PROCEEDINGS.

Administrative agency review, Davidson Local 25 §25.05.

Agreed summary trial.

Agreement, Davidson Local 24 §24.01.

Procedure, Davidson Local 24 §24.02.

Rule 24 agreement, Davidson Local Appx Forms.

STATUS CONFERENCES.

Docket calls and status conferences, Davidson Local 18 §18.03.

SUBPOENAS, Davidson Juv 6.

Civil cases, Davidson Local 28.

Criminal cases, Davidson Local 11.

SUMMARY JUDGMENTS.

Motions filed before hearing, Davidson Local 26 §26.03.

SUMMARY TRIAL.

Agreed summary trial.

Agreement, Davidson Local 24 §24.01.

Procedure, Davidson Local 24 §24.02.

SUSPENSION OF RULES.

Civil rules, Davidson GenSess Civ §1.03.

Criminal rules, Davidson GenSess Crim §1.03.

T

TEMPORARY INJUNCTIONS.

Hearings, Davidson Local 19 §19.04.

THIRD-PARTY CIVIL CASES.

Filing, Davidson GenSess Civ §3.02.

TRANSFER OF CASES, Davidson Local 3 §3.04.

Bond in transfer hearings, Davidson Juv 8.

TRIAL.

Civil cases.

Agreed summary trial.

Agreement, Davidson Local 24 §24.01.

Procedure, Davidson Local 24 §24.02.

Audio/visual recordings.

Notice to adverse party, Davidson Local 22 §22.06, Davidson Local 29 §29.02.

Continuances, Davidson Local 13 §13.02, Davidson Local 27 §27.05.

Jury trials, Davidson Local 31.

Setting for trial, Davidson GenSess Civ §5.01, Davidson Local 18 §18.01, Davidson Local 27 §27.01.

Setting trial date, Davidson Local 13 §13.01.

Criminal cases.

Audio/video recordings.

Notice to adverse party, Davidson Local 10 §10.03.

Setting for trial, Davidson GenSess Crim §4.01.

TRUSTS.

Probate cases, Davidson Local 39 §39.04.

V

VICTIMS OF CRIME.

Children.

Criminal injuries compensation.

Extraordinary relief, Davidson Juv 13.

Deposition.

Juvenile cases with criminal case pending, Davidson Juv 10.

Plea agreements.

Notice to victims, Davidson Local 14 §14.03.

VIDEO EQUIPMENT GUIDELINES.

Criminal cases, Davidson GenSess Crim §17.01.

W

WAIVER OR MODIFICATION OF RULES,
Davidson Juv 19.

WARRANTS.

Forfeiture/seizure of property, Davidson
GenSess Crim §15.01.

WITHDRAWAL OF COUNSEL.

Civil cases, Davidson GenSess Civ §2.02.

Criminal cases, Davidson GenSess Crim
§2.02.

Motions, Davidson Juv 10.

Rules of practice, Davidson Local 5 §5.02.

WITNESSES.

Civil cases.

Subpoenas.

Address of witness, Davidson Local 28
§28.03.

Prison inmates, Davidson Local 28
§28.04.

Time for issuing, Davidson Local 28
§28.02.

WITNESSES —Cont'd

Criminal cases.

Continuances.

Absence of witness, Davidson Local 13
§13.02.

Subpoenas.

Address of witness, Davidson Local 11
§11.03.

Prison inmates, Davidson Local 11
§11.04.

Time for issuing, Davidson Local 11
§11.02.

Exchange of information about

witnesses, Davidson Local 29 §29.01.

Readiness, certificate of.

Inclusion of witness list, Davidson Juv 11.

WORKERS' COMPENSATION.

Benefits review conference.

Scheduling and setting cases, Davidson
Local 27 §27.04.

Settlements.

Presentation of settlements, Davidson Local
23 §23.04.

HAMILTON COUNTY

CHANCERY AND CIRCUIT COURTS
GENERAL SESSIONS, CIVIL & CRIMINAL
CRIMINAL COURT
JUVENILE COURT

LOCAL RULES OF PRACTICE, CHANCERY AND CIRCUIT COURTS OF TENNESSEE, ELEVENTH JUDICIAL DISTRICT OF TENNESSEE, HAMILTON COUNTY, TENNESSEE

EFFECTIVE SEPTEMBER 1, 2007

TABLE OF CONTENTS

RULE.	RULE.
1. Effective Date, Applicability, Suspension, and Citation of Rules	6.08. Priorities
1.01. Effective Date	7. Case Management
1.02. Applicability	7.01. Case Assignment and Reassignment
1.03. Suspension	7.02. Setting of Cases
1.04. Citation	7.03. Continuances
2. Definitions and Forms	7.04. Trial Docket
2.01. Definitions	7.05. Dismissal of Dormant Cases
2.02. Forms	7.06. Withdrawal of Counsel
3. Pleadings and Other Papers	8. Trial
3.01. Cost Bonds	8.01. Jury Demand
3.02. Civil Cover Sheet	8.02. Pretrial Schedule
3.03. Facsimile Number	8.03. Record of Proceedings
3.04. Original Signatures	8.04. Control and Disposal of Exhibits
3.05. Extraordinary Relief	8.05. Settlement
3.06. <i>Ex parte</i> Approvals	9. Decorum
4. Certificates of Service, Submission of Papers and Copies, and Files	9.01. Attire
4.01. Certificates of Service	9.02. Bar Space
4.02. Submission of Papers and Copies	9.03. Bench Conferences
4.03. Files	9.04. Counsel, Litigant, and Spectator Conduct
4.04. Filing of Discovery	9.05. Forbidden Conduct
Sec. 4.05. E-Filing.	9.06. Juror Contact
5. Orders and Costs	10. Domestic Relations
5.01. Preparation	10.01. Financial Statements
5.02. Approval	10.02. <i>Pendente Lite</i> Hearings
5.03. Proposed Orders	10.03. Default Divorce Setting; Failure to Appear
5.04. Taxing of Costs	10.04. Signature Requirements in Agreed Divorces
5.05. Re-Taxing of Costs	10.05. Attorney Fees
6. Motions	10.06. Family Law Mediation
6.01. Authority	11. Funds
6.02. Schedule and Call	11.01. Funds Paid Into Court
6.03. Exhibits	11.02. Funds Paid Out of Court
6.04. Responses	12. Masters
6.05. Briefs	12.01. Reference
6.06. Dispositive Motions	12.02. Notice of Hearing
6.07. Failure to Appear; Late Appearance	

RULE.

- 12.03. Continuances
- 12.04. Evidence Exchange
- 12.05. Court Reporter or Stipulation
- 12.06. Objections to Master's Report
- 13. Adoptions
 - 13.01. Surrenders
 - 13.02. Petitions for Adoption
 - 13.03. Waivers
 - 13.04. Adoptions — Final Hearings — Minors
 - 13.05. Terminations
 - 13.06. Final Report on Adoption
- 14. Gifts and Gratuities
 - 14.01. Court Officers and Deputy Sheriffs
 - 14.02. Clerks
- 15. Judicial Review of Administrative Decisions — Special Procedures
 - 15.01. Briefs Required
 - 15.02. Filing and Service of Briefs
 - 15.03. Hearings — Oral Argument
 - 15.04. Waiver of Oral Argument
- 16. Guardianship and Conservatorship
 - 16.01. Petitions
 - 16.02. Conservatorships

RULE.

- 16.03. Guardianships
- 16.04. Submission of Orders with Petition
- 16.05. Guardian *Ad Litem*
- 16.06. Orders of Appointment
- 16.07. Subsequent Orders
- 17. Probate
 - 17.01. Hours
 - 17.02. Interested Parties
 - 17.03. Petitions
 - 17.04. Common Form Probate
 - 17.05. Solemn Form Probate
 - 17.06. Small Estates
 - 17.07. Claims.
 - 17.08. Authority of Master
 - 17.09. Inventories and Accountings
 - 17.10. Summary Removal and Sanctions
 - 17.11. Fees and Expenses
 - 17.12. [Deleted]
- 18. Sale of Real Property
 - 18.01. Property Description
 - 18.02. Orders Authorizing Sale
 - 18.03. Advertisements
 - 18.04. Orders Confirming Sale

Compiler's Notes. These rules, filed August 22, 2007, effective September 1, 2007, supersede the previously adopted Local Rules of Civil

Practice for the Chancery and Circuit Courts of Hamilton County, Tennessee.

Rule 1. Effective Date, Applicability, Suspension, and Citation of Rules

Sec. 1.01. Effective Date

Effective September 2017, the Chancery and Circuit Courts of the Eleventh Judicial District (Hamilton County, Tennessee) abrogate all existing local rules of practice and adopt these rules. [Adopted effective September 1, 2017.]

Sec. 1.02. Applicability

Rules 1 through 14 apply in Chancery and Circuit Courts. Rules 15 through 18 apply in Chancery Court only. [Adopted effective September 1, 2017.]

Sec. 1.03. Suspension

The Judges of the Court retain discretion to suspend any of these rules for good cause. [Adopted effective September 1, 2017.]

Sec. 1.04. Citation

These rules may be cited as LRCP. [Adopted effective September 1, 2017.]

Rule 2. Definitions and Forms

Sec. 2.01. Definitions

As used in these rules, the term “Clerk” shall include the Clerk and Master and the term “Judge” shall include Chancellor. [Adopted effective September 1, 2017.]

Sec. 2.02. Forms

These rules require the filing or lodging of various forms. Parties and their attorneys may use the forms available from the Clerk or forms equivalent in content and format thereto. [Adopted effective September 1, 2017.]

Rule 3. Pleadings and Other Papers

Sec. 3.01. Cost Bonds

For every pleading, which seeks affirmative relief, including counterclaims, cross-claims, and third-party complaints, a surety shall execute a bond for costs in the following form:

COST BOND

I hereby acknowledge and bind myself for the payment of all non-discretionary costs that may be adjudged herein against _____, the principal, in the event that the principal does not pay them.

Witness my hand this _____ day of _____, 20____.

Signature

Name

Address

Telephone

The bond shall be attached to the pleading or filed separately. The surety shall not be released from the obligation as surety until there is provision for a substitute surety. [Adopted effective September 1, 2017.]

Sec. 3.02. Civil Cover Sheet

A fully completed Civil Case Cover Sheet shall accompany every pleading which seeks affirmative relief. Parts VI and VIII of a Civil Case Cover Sheet shall be completed and accompany every answer or other initial responsive pleading. Civil Case Cover Sheets are required solely for administrative purposes, and matters appearing only on cover sheets have no legal effect in the action. [Adopted effective September 1, 2017.]

Sec. 3.03. Facsimile Number

In addition to the identifying information that Rule 11.01 of the Tennessee Rules of Civil Procedure requires, pleadings and other papers shall bear the facsimile telephone number, if available, of the filing attorney or *pro se* litigant. [Adopted effective September 1, 2017.]

Sec. 3.04. Original Signatures

Papers to be filed or lodged that require the signature of a party, the party's counsel, or other individual or entity shall contain the original signature, preferably in blue ink unless they are filed or lodged by facsimile or electronically pursuant to Rule 5A or Rule 5B of the Tennessee Rules of Civil Procedure. [Adopted effective September 1, 2017; amended by order dated August 17, 2018, effective September 1, 2018.]

Sec. 3.05. Extraordinary Relief

Complaints for writs of certiorari, writs of attachment, restraining orders, or other extraordinary relief shall be first filed with the Clerk and verified. Otherwise they must be accompanied by affidavit setting forth the facts justifying the relief sought. [Adopted effective September 1, 2017.]

Sec. 3.06. Ex parte Approvals

Petitions for the approval of workers' compensation claims, minors' claims, name changes, and other similar matters shall be prescheduled with the Court or filed with the Clerk before being presented to the Judge for approval. [Adopted effective September 1, 2017.]

Rule 4. Certificates of Service, Submission of Papers and Copies, and Files**Sec. 4.01. Certificates of Service**

- (a) After suit is commenced, all papers required to be served on a party by any person except the Clerk shall contain a certificate of service that recites the name and address of each person served and the date and method of service.
- (b) In *ex parte* matters, copies of motions and other papers shall be mailed to interested parties. Such papers must contain a certificate of service that includes the name and address of the interested parties served and the date of service.
- (c) Any notice of appeal from a judgment of the Court shall be served on the court reporter, if any, and the certificate of service accompanying the notice shall so reflect. [Adopted effective September 1, 2017.]

Sec. 4.02. Submission of Papers and Copies

All papers to be filed or lodged, including pleadings, motions, briefs, and proposed judgments and orders, shall be filed or lodged with the Clerk. Such papers shall not be mailed to or left with the Judge but shall be submitted to the Clerk for proper handling. No copy of any paper shall be provided to the Judge unless the Judge so requests. [Adopted effective September 1, 2017.]

Sec. 4.03. Files

All files and records of the Court shall at all times be under the custody and control of the Clerk. Files may not be withdrawn without permission of the Clerk and the Judge. [Adopted effective September 1, 2017.]

Sec. 4.04. Filing of Discovery

Filing of discovery is not mandatory unless in support of a motion. [Adopted effective September 1, 2017.]

Sec. 4.05. E-Filing.

Pursuant to Tennessee Rules of Civil Procedure 5B the Circuit Courts and Chancery Courts allow certain papers to be filed by electronic means that comply with technological standards promulgated by the Tennessee Supreme Court. Please consult the Chancery Court or Circuit Court website for case types and document types that can be filed electronically, as well as for instructions for e-filing and the requisite fees. Instructions are also available for review in both the Clerk & Master's office and the Circuit Court Clerk's office. [Adopted by order dated August 17, 2018, effective September 1, 2018.]

Rule 5. Orders and Costs**Sec. 5.01. Preparation**

(a) Unless otherwise ordered, in every case or motion disposed of by an oral ruling of the Court, counsel for the prevailing party shall prepare the Order or Judgment, and the Clerk shall prepare, in probate cases, orders confirming reports of the Master on accountings and settlements, authorizing the initial issuance of letters, and referring exceptions to claims, year's support, home-stead, exempt property, and elective share to the Master.

(b) Unless the Court allows a greater time, the Order or Judgment shall be prepared and forwarded to adversary counsel within five (5) business days of the hearing or trial. *Ex parte* orders shall be lodged with the Clerk within five (5) business days of the hearing. Orders shall not be lodged granting or denying any relief before the Court passes on the issue, except for agreed orders signed by all counsel or *pro se* parties.

(c) If counsel fails to prepare and lodge Orders with the Court within fourteen (14) days of the announcement of an agreement or a ruling, the Court may strike or dismiss the subject motion or pleading. [Adopted effective September 1, 2017.]

Sec. 5.02. Approval

(a) Unless waived by the Court, all orders proposed to be entered shall be submitted to all parties or their counsel for approval. Counsel shall promptly review a proposed order and approve it if it accurately reflects the ruling of the Court or notify the adversary of specific objections.

(b) In matters involving five (5) or more parties, the Court will, upon application and in proper circumstances, allow orders to be filed in accordance with LRCP 5.03. [Adopted effective September 1, 2017.]

Sec. 5.03. Proposed Orders

(a) No proposed order may be lodged with the Clerk until it has been submitted to all other parties or their counsel and they have refused to approve it or failed to respond within five (5) business days of service, unless waived by the Court. Orders lodged under this rule shall bear the word “PROPOSED” at the top of the Order.

(b) After the proposed order is lodged, adverse parties having objections to the proposed order shall file specific objections thereto, accompanied by their own proposed order, within three (3) business days.

(c) Nine (9) business days after the initial proposed order is lodged under this rule, the Clerk shall deliver all proposed orders including any exception or objection to the Judge for action. Additional time may be requested by conference call with all counsel or by agreement of the parties. “Business days” shall be computed in accordance with Rule 6.01 of the Tennessee Rules of Civil Procedure. [Adopted effective September 1, 2017.]

Sec. 5.04. Taxing of Costs

(a) All final orders shall provide for the assessment of court costs.

(b) Orders for payment of costs shall be rendered jointly against the party and the party’s sureties, if any. [Adopted effective September 1, 2017.]

Sec. 5.05. Re-Taxing of Costs

For good cause, the Clerk may move the Court for a re-taxing of court costs pursuant to Tenn. Code Ann. § 20-12-137. [Adopted effective September 1, 2017.]

Rule 6. Motions**Sec. 6.01. Authority**

All motions shall be in writing and cite the rule, statute or other authority for the relief sought. Motions not citing proper authority or citing only Rule 7.02 of the Tennessee Rules of Civil Procedure shall be stricken. [Adopted effective September 1, 2017.]

Sec. 6.02. Schedule and Call

(a) In Chancery Court, Part 1, motions will be heard at 1:30 p.m. on the first (1st) and third (3rd) Mondays of each month. In Chancery Court, Part 2, motions will be heard at 1:30 p.m. on the second (2nd) and fourth (4th) Mondays of each month. When a motion day falls on a holiday, motions will be heard on the next business day, unless another date is announced and posted. Motions may be heard at other times with the consent of the Judge. In both parts of Chancery Court, motions will be called at the Court’s first regularly scheduled motion day occurring no less than five (5) business days after the filing of the motion. Notice of the date and time of the hearing shall be placed on the motion.

(b) Motions in Circuit Court will be heard on Mondays except on holidays, commencing in Division I at 9:00 a.m. Motions may be heard at other times with the consent of the Judge. Motions filed by 4:00 p.m. on Thursday will be called the second following Monday. [Adopted effective September 1, 2017.]

Sec. 6.03. Exhibits

The underlying document(s) that are the subject of the motion shall be an exhibit(s) to the motion. [Adopted effective September 1, 2017.]

Sec. 6.04. Responses

Responses to motions are allowed but not required, except responses to motions citing Rules 12, 26 through 37, and 56 of the Tennessee Rules of Civil Procedure. Failure to file a required response by 4:00 p.m. at least two (2) business days preceding the date that the motion is to be called may result in the granting of the motion. [Adopted effective September 1, 2017.]

Sec. 6.05. Briefs

A memorandum of law shall accompany every motion or response which may require the resolution of an issue of law. Any motion, response, brief, or memorandum of law that makes reference to a transcript or deposition shall specify the relevant page(s) of the transcript or deposition and attach those pages. Any brief that cites a foreign case shall have a copy of the case attached or the Court may disregard the authority. [Adopted effective September 1, 2017.]

Sec. 6.06. Dispositive Motions

Only the relevant portion(s) of any discovery materials used to support a motion for dismissal, judgment on the pleadings, or summary judgment or response thereto shall be filed. [Adopted effective September 1, 2017.]

Sec. 6.07. Failure to Appear; Late Appearance

Unless otherwise excused, a failure to appear shall result in a motion being stricken or adjudicated as the Court orders. If there is to be a late arrival or attendance in another Court, counsel shall notify the Judge's office and other counsel or request a continuance of the motion and notify other counsel thereof before the hearing. [Adopted effective September 1, 2017.]

Sec. 6.08. Priorities

Motions requiring oral testimony will be heard after motions not requiring such evidence. Non-jury matters may be heard on a motion day, but motions in any Court take priority over non-jury matters. [Adopted effective September 1, 2017.]

Rule 7. Case Management**Sec. 7.01. Case Assignment and Reassignment**

Cases in Chancery Court are assigned sequentially by Part. However, all matters pertaining to guardians, conservators, mental health appointments, and adoptions, when filed in Chancery Court are assigned to Part 1, and all matters pertaining to probate and the construction of trusts are assigned to Part 2. All cases in Circuit Court are assigned sequentially by Division. Any case previously filed and dismissed and then refiled will be assigned to its previously assigned Part or Division. Any related family law matter, including

but not limited to an order of protection and/or a divorce, shall be assigned to the Part or Division of the Court in which the case is first filed. If a Court or Courts recuse from a case, then that case will be reassigned pursuant to the procedure adopted by this Judicial District and consistent with the Tennessee Supreme Court Rules. All Petitions for Orders of Protection shall be assigned in rotation such that two (2) Petitions are assigned to Circuit Court followed by one (1) Petition assigned to Chancery Court. This rotation is subordinate to the prior case filed rule contained in this section. If cases controlled by Rule 42.01 of the Tennessee Rules of Civil Procedure are pending in different divisions of Circuit Court and/or Chancery Court, all such cases will be transferred for discovery, unless otherwise ordered, to the Court in which the case with the lowest docket number (case filed first) is pending. The Judges of the courts involved will meet at an appropriate time to decide for what purposes the cases will be consolidated. The Judges may solicit input from the attorneys of record on the consolidation issues. [Adopted effective September 1, 2017.]

Sec. 7.02. Setting of Cases

(a) Cases shall be set by motion, agreed order, or action of the Court. When a case is set on an unopposed motion or by agreement, counsel are deemed to have certified that they are available for trial and the case is in all respects ready for trial.

(b) When a party objects to having a case set because trial preparation is not complete, the Court may issue a scheduling order establishing deadlines for completing trial preparation and setting a trial date.

(c) Conferences, default hearings, and other uncontested matters shall be set by appointment with the Judge's office. [Adopted effective September 1, 2017.]

Sec. 7.03. Continuances

Cases may be continued only by leave of the Court by written order or if the case is one referred to the Master, by leave of the Master as provided in LRCP 12.03. Failure to complete discovery or prepare for trial shall not necessarily constitute grounds for a continuance. [Adopted effective September 1, 2017.]

Sec. 7.04. Trial Docket

(a) Unless otherwise ordered, trials and other contested evidentiary matters will be assigned for hearing at 9:30 a.m. in Chancery Court and 9:00 a.m. in Circuit Court. Attorneys and parties shall be prompt for all sessions. Unless an Order continuing, settling, or dismissing the matter has been filed prior to the morning of trial, cases set for trial by Order are subject to dismissal or entry of judgment upon the failure of plaintiff to appear or upon failure of defendant to appear respectively.

(b) In the event a case ready for trial on the day assigned is not reached on that day, the case will be reset for trial on the first available trial date or held in line at the Court's discretion. [Adopted effective September 1, 2017.]

Sec. 7.05. Dismissal of Dormant Cases

(a) If no action is taken in a case for two hundred seventy (270) days, the Court may dismiss the case. Thirty (30) days before such a dismissal, the Clerk or

Judge shall notify counsel or post a Procedural Steps List containing the name and docket number of each case to be dismissed. The Procedural Steps List shall be prominently posted in the Clerk's office and on the web site (<http://www.hamiltontn.gov/courts>).

(b) The Clerk shall mail to counsel of record and unrepresented parties whose address can be ascertained from information in the file copies of each order dismissing a case for want of prosecution. [Adopted effective September 1, 2017.]

Sec. 7.06. Withdrawal of Counsel

Once counsel has made a general appearance, counsel may not withdraw except for good cause, by motion and order of the Court. [Adopted effective September 1, 2017.]

Rule 8. Trial

Sec. 8.01. Jury Demand

When a jury is demanded in accordance with Rule 38 of the Tennessee Rules of Civil Procedure, the document demanding a jury and all subsequent documents filed in the case shall bear the words "JURY DEMAND" in capital letters in the caption of the case above the space for the case number. [Adopted effective September 1, 2017.]

Sec. 8.02. Pretrial Schedule

(a) At least ten (10) business days before trial, the parties shall submit to the Court in writing any contested issues of law to be addressed by the Jury or the Court together with citations of authority and/or briefs. A Trial Brief shall be a concise statement of the issues and law supported by appropriate citations. If a citation is to a decision not fully reported in Southwest Reporter, Tennessee Decisions, a copy of the entire text of the decision shall be attached to the brief.

(b) At least ten (10) business days before trial, the party first demanding a jury shall file a proposed jury charge on any issue not addressed by the Tennessee Pattern Instructions and proposed jury verdict forms. At least five (5) days before trial, the other parties shall file any proposed changes to the proposals. This rule shall not preclude the parties from filing jury requests concerning contested issues arising during the trial.

(c) At least ten (10) business days before trial, each party shall file and serve by facsimile or by hand: (1) a Witness List, including names, addresses, and, if known, telephone numbers of all witnesses, including rebuttal witnesses; and (2) an Exhibit List, including rebuttal exhibits. Within five (5) business days of the receipt of an Exhibit List, the recipient shall file and, by facsimile or hand, serve any objections to authenticity of any exhibit or such objection shall be deemed waived. At least five (5) business days before trial, the recipient shall file and serve all other objections. Witnesses and exhibits not identified in compliance with this rule shall not be utilized at trial.

(d) If the parties anticipate the use of more than fifty (50) trial exhibits, they shall so notify the Court. Before trial, the parties shall meet to examine or exchange all trial exhibits and, if the Court so directs, pre-mark all trial

exhibits in sequential order without designation as to plaintiff or defendant. Any marked exhibit the admissibility of which the parties dispute shall be marked for identification only. Unless a marked exhibit is marked for identification only, its admissibility shall be deemed to be undisputed. The parties shall file a list of any marked exhibits no later than the morning of trial. [Adopted effective September 1, 2017.]

Sec. 8.03. Record of Proceedings

It is the responsibility of litigants to arrange for court reporters to record the proceedings of the Court. [Adopted effective September 1, 2017.]

Sec. 8.04. Control and Disposal of Exhibits

(a) All trial exhibits shall be accounted for and placed in the custody of the court reporter unless otherwise directed by the Court.

(b) If no appeal is filed, the parties shall have forty-five (45) days to withdraw exhibits and depositions after entry of the final judgment. The court reporter or Clerk may destroy or dispose of exhibits and depositions not withdrawn from their possession. [Adopted effective September 1, 2017.]

Sec. 8.05. Settlement

When a case is set for trial and the parties reach a settlement, the parties shall give immediate notice of the settlement to the Court. Counsel shall notify witnesses that they are excused from attending court due to the settlement. In the event that notice is not given, economic sanctions may be imposed. [Adopted effective September 1, 2017.]

Rule 9. Decorum

Sec. 9.01. Attire

Counsel, litigants, witnesses, court reporters, and court officers shall not dress in a manner which detracts from proper decorum in the Court. [Adopted effective September 1, 2017.]

Sec. 9.02. Bar Space

The space within the bar in the courtroom is reserved for attorneys, legal assistants, and litigants actually engaged in trial. All other persons will be seated outside the bar. [Adopted effective September 1, 2017.]

Sec. 9.03. Bench Conferences

Bench conferences should be requested only when absolutely necessary in aid of a fair trial. The conferences shall be conducted in a professional manner. [Adopted effective September 1, 2017.]

Sec. 9.04. Counsel, Litigant, and Spectator Conduct

When Court is in session, all persons present shall be seated at all times except when addressing the Court and shall not talk, laugh, or otherwise make any noise. All cell phones and beepers must be turned off. All counsel are expected

to comply with the Chattanooga Bar Association Guidelines for Professional Conduct that are incorporated herein by reference and are attached hereto as Appendix 1 to these rules. [Adopted effective September 1, 2017.]

Sec. 9.05. Forbidden Conduct

Counsel and witnesses are prohibited from using curse or swear words even when quoting others. When quoting others, counsel and witnesses shall omit any offensive word and state only the first letter of the word. Any deviation from this rule requires prior permission from the Court. [Adopted effective September 1, 2017.]

Sec. 9.06. Juror Contact

No attorney, party, witness, or any other person interested in a case being tried shall engage in any conversation with any juror until such juror's service for the term has ended. [Adopted effective September 1, 2017.]

Rule 10. Domestic Relations

Sec. 10.01. Financial Statements

(a) Both parties in all domestic relations cases in which support is an issue shall file and serve an affidavit, stating all income as of the date of execution, at least ten (10) days before trial. This affidavit is available from the Clerk. A party shall compile and file an affidavit stating expenses only if:

- (i) alimony is sought or resisted;
- (ii) a deviation from child support guidelines is sought; or
- (iii) it is contended the income statement is not representative of future income. If a party fails to file a statement of income required herein, the other party shall file an affidavit containing a good-faith estimate of the income of the defaulting party.

(b) In all divorce cases, when a trial date is set, a pretrial conference shall also be set. Attendance is mandatory unless excused for cause. In all divorce cases, at least fifteen (15) days before trial, both parties shall serve verified financial statements, as set forth in Exhibit A attached hereto in Appendix 2 to these rules. The parties shall file a joint asset and liability statement for division of property that is not disputed at least ten (10) days before trial, as set forth in Exhibit B attached hereto in Appendix 2 to these rules. For assets and liabilities that are disputed as to division, at least ten (10) days before trial, the parties shall also file a proposed division of marital property and liabilities, as set forth in Exhibit C attached hereto in Appendix 2 to these rules, and jointly executed agreed stipulations, as set forth in Exhibit D attached hereto in Appendix 2 to these rules.

(c) Failure to file the statements required herein shall result in dismissal or continuance of the case, entry of default judgment against the non-complying party, or other appropriate sanctions in the Court's discretion.

(d) At least ten (10) days before trial of any contested divorce is scheduled, counsel shall file a memorandum, as set forth in Exhibit E attached hereto in Appendix 2 to these rules. [Adopted effective September 1, 2017.]

Sec. 10.02. *Pendente Lite* Hearings

(a) *Pendente lite* hearings for child support shall be heard only on motion accompanied by an affidavit containing the income of the custodial party with supporting documentation, a good-faith estimate of the income of the non-custodial party, the amount of time that the child spends with each party, and the number of persons who reside with each party. If the non-custodial party contests any such estimate, within five (5) business days after receipt of the motion from the custodial party, that party shall file and serve his or her own affidavit with supporting documentation. The parties shall also file with their affidavits a proposed Child Support Worksheet.

(b) *Pendente lite* hearings for alimony shall be heard only on motion accompanied by an affidavit stating income and expenses. Within five (5) business days after receipt of the motion, the non-moving party contesting alimony shall file an affidavit delineating all income and expenses. [Adopted effective September 1, 2017.]

Sec. 10.03. Default Divorce Setting; Failure to Appear

Any uncontested divorce passed for good cause must be passed to a day certain by order with at least ten (10) days notice to the other party. Failure of the plaintiff or plaintiffs counsel to appear, ready for trial, will result in the case being passed or dismissed, in the discretion of the Court. [Adopted effective September 1, 2017.]

Sec. 10.04. Signature Requirements in Agreed Divorces

All counsel of record and any self-represented litigant must sign any proposed, agreed Final Order of Divorce. All parties must execute and submit a Marital Dissolution Agreement and, where applicable, a Permanent Parenting Plan, including a Child Support Worksheet. [Adopted effective September 1, 2017.]

Sec. 10.05. Attorney Fees

In awarding attorney fees in domestic relations cases, the Court shall consider, in addition to the factors set forth in Rule 1.5 of the Rules of Professional Conduct and any other appropriate authority, the attorney's contract with the client, the financial resources of the parties, and the good-faith efforts of the parties to resolve the case consistent with existing law. [Adopted effective September 1, 2017.]

Sec. 10.06. Family Law Mediation

Counsel shall comply with all statutes regarding mediation in divorce cases including, but not limited to, those involving assets, liabilities, alimony, and parenting plans. Both parties shall make a good-faith effort to exchange at least one (1) day prior to mediation, and no later than the date of mediation, asset and liability statements, income and expense statements, proposed division of assets and liabilities, and proposed parenting plans with supporting documentation. Pursuant to the applicable mediation statutes, these documents shall not be admissible in court and shall be used for settlement negotiation purposes only. These documents shall contain a statement to that effect. [Adopted effective September 1, 2017.]

Comment. The addition of this rule will facilitate the exchange of pertinent information before or at the mediation, which will enhance the likelihood of success at the mediation.

Rule 11. Funds

Sec. 11.01. Funds Paid Into Court

(a) No litigant funds shall be paid into court without the Court's order. Funds paid into court are not invested for the benefit of the litigants unless the Court so directs.

(b) All orders directing investment of funds shall contain the full legal name and address of each person or entity to whom the funds belong. Orders pertaining to minors shall state the dates of the minor's birth and majority. Social security and taxpayer identification numbers may be requested by the Court for administrative purposes. Such numbers, if requested, shall not be part of the public record.

(c) It is the duty of the attorney or litigant seeking investment of funds to call to alert the Clerk that the funds are to be invested. [Adopted effective September 1, 2017.]

Sec. 11.02. Funds Paid Out of Court

Before funds will be released by the Clerk, social security or taxpayer identification number must be furnished by the recipient to the Clerk, and a receipt or ledger for the funds must be signed. [Adopted effective September 1, 2017.]

Rule 12. Masters

Sec. 12.01. Reference

At the time a case is set for trial, counsel shall inform the Court of any issues which may be the proper subject of reference to a Master, such as accounting, damages, and validity and priority of liens. Reference to the Master shall be consistent with Rule 53.01 of the Tennessee Rules of Civil Procedure and appointment may be obtained upon motion of a party or upon the Court's own initiative. [Adopted effective September 1, 2017.]

Sec. 12.02. Notice of Hearing

Following the entry of an Order of Reference, the Master will notify all parties involved of a hearing date to take proof on the matter referred. The Master, if necessary, may schedule a meeting with counsel in order to determine the procedure on the reference. [Adopted effective September 1, 2017.]

Sec. 12.03. Continuances

Hearings will only be continued by leave of the Master for good cause, which shall be brought to the attention of the Master as soon as practicable before the hearing date. The absence of a witness shall not be grounds for a continuance unless the witness has been subpoenaed in accordance with Rule 45 of the Tennessee Rules of Civil Procedure. Requests for continuances shall be made by telephone conference call involving all interested parties. [Adopted effective September 1, 2017.]

Sec. 12.04. Evidence Exchange

At least ten (10) days before the hearing, the parties shall exchange exhibits upon which they wish to rely at the hearing. [Adopted effective September 1, 2017.]

Sec. 12.05. Court Reporter or Stipulation

The parties shall either i) stipulate in writing prior to the hearing that the Master's findings of fact shall be final or ii) employ a court reporter to attend the hearing and prepare a transcript of the proceeding. This transcript shall be filed with the Clerk for preparation of the Master's Report and filing pursuant to Rule 53.04(1) of the Tennessee Rules of Civil Procedure. [Adopted effective September 1, 2017.]

Sec. 12.06. Objections to Master's Report

Objections shall be supported by a transcript of proceedings before the Master and shall state specifically the grounds for the objections by specific references to the transcript, except in matters stipulated pursuant to LRCP 12.05. [Adopted effective September 1, 2017.]

Rule 13. Adoptions**Sec. 13.01. Surrenders**

- (a) Surrenders may usually be scheduled as *ex parte* matters.
- (b) In Chancery Court all surrender documents shall be reviewed by the Clerk's office before the surrender occurs.
- (c) Counsel shall inform the Court's secretary if more than one child is the subject of surrender or circumstances exist that will require an unusually lengthy hearing.
- (d) There shall be a separate surrender for each child. [Adopted effective September 1, 2017.]

Sec. 13.02. Petitions for Adoption

A separate verified petition must be filed for each adoptive child. Separate docket numbers shall be assigned to each petition, and there shall be a separate final order in each case. Cases involving the same petitioner shall be assigned to the same Judge. [Adopted effective September 1, 2017.]

Sec. 13.03. Waivers

The law allows the Court to waive certain procedures and time requirements in appropriate circumstances. Counsel or parties may not assume that the Court will routinely waive such procedures or requirements. Anyone seeking waiver shall, in a motion or proposed order, cite the statutory authority thereof and state the circumstances justifying relief. [Adopted effective September 1, 2017.]

Sec. 13.04. Adoptions — Final Hearings — Minors

- (a) In an adoption by relatives or a step-parent, the Court usually waives or shortens the six-month waiting period after filing if the child has lived in the home for more than one (1) year.

(b) In other adoptions, the Court is unlikely to waive or reduce in the six-month waiting period after filing the petition unless the child has lived in the home for more than one (1) year and there are compelling reasons.

(c) In no event is a final hearing to be scheduled less than ten (10) days after the petition is filed.

(d) The child and the parents shall appear before the Court for the final hearing unless specifically excused by the Court. Appropriate dress is required.

[Adopted effective September 1, 2017.]

Sec. 13.05. Terminations

If a proposed termination is contested or either natural parent is incarcerated, counsel shall so advise the Court. Parents whose rights are subject to termination may be eligible for an appointed attorney. Lawsuits to terminate parental rights shall be concluded before the adoption is set. [Adopted effective September 1, 2017.]

Sec. 13.06. Final Report on Adoption

The final report in response to the Court's Order of Reference shall be filed at least three (3) days before the final hearing. The purpose of the Court's Order of Reference is to bring the status of the prospective adoptive home and the child up to date immediately prior to finalization of the adoption. [Adopted effective September 1, 2017.]

Rule 14. Gifts and Gratuities

Sec. 14.01. Court Officers and Deputy Sheriffs

No attorney or party shall offer, nor shall any court officer or deputy sheriff accept any money or other thing of value for acting within the scope of one's duties. [Adopted effective September 1, 2017.]

Sec. 14.02. Clerks

No attorney, litigant, bank, title insurance company, or any other person regularly doing business in or with the office of the Clerk shall offer, nor shall any Clerk receive, any gifts, money, or other thing of value, except the fees, taxes, and costs authorized by statute, rule, or order. [Adopted effective September 1, 2017.]

Rule 15. Judicial Review of Administrative Decisions – Special Procedures

Sec. 15.01. Briefs Required

Briefs must be filed in all cases heard by the Court upon the record from an administrative tribunal or agency. If a petitioner fails to file his or her brief within the time provided by this rule or within the time ordered by the Court, the action may be dismissed and the agency decision affirmed. If the defendant has not filed his or her brief within the time provided by this rule or within the time ordered by the Court, the Court may decide the case solely upon the record and the petitioner's brief. [Adopted effective September 1, 2017.]

Sec. 15.02. Filing and Service of Briefs

The petitioner must file and serve a brief within thirty (30) days after the record is filed. The defendant must file and serve a brief within thirty (30) days after service of the brief of the petitioner. Reply briefs may be filed at the option of a party and must be filed and served within fourteen (14) days after service of the preceding brief. Upon motion of a party or upon its own motion, the Court may enlarge or shorten the time for filing briefs. [Adopted effective September 1, 2017.]

Sec. 15.03. Hearings — Oral Argument

Hearings on oral argument shall be scheduled as provided in LRCP 7.02 after the record has been filed. [Adopted effective September 1, 2017.]

Sec. 15.04. Waiver of Oral Argument

Oral argument may be waived by agreement of counsel. If oral argument is waived, counsel shall notify in writing the Chancellor's office after all briefs are filed. [Adopted effective September 1, 2017.]

Rule 16. Guardianship and Conservatorship**Sec. 16.01. Petitions**

A separate petition must be filed for each respondent. Separate docket numbers shall be assigned to each petition, and there shall be a separate Final Order in each case. [Adopted effective September 1, 2017.]

Sec. 16.02. Conservatorships

The petition shall be verified and shall contain the information required by statute and these rules. Petitioner shall list the names and addresses of all persons to whom notice is required. Notice shall be given by the Clerk. Service of process shall be accomplished by an authorized officer. A verified statement for a physician or psychologist in accordance with Tenn. Code Ann. § 34-3-105 shall be filed, if available, with the petition or, if not then available, before or at the hearing. [Adopted effective September 1, 2017.]

Sec. 16.03. Guardianships

The petition shall be verified and shall contain the information required by statute and these rules. Notice shall be provided to all interested persons, and service upon the respondent shall be in accordance with the law. [Adopted effective September 1, 2017.]

Sec. 16.04. Submission of Orders with Petition

Orders appointing or waiving a guardian *ad litem*, setting a hearing date, and providing for the duties of the guardian *ad litem* shall be submitted with each petition for conservatorship or guardianship. Examples of such orders may be obtained from the Clerk's office. [Adopted effective September 1, 2017.]

Sec. 16.05 Guardian Ad Litem

(a) The Court will usually appoint a licensed attorney as the guardian *ad litem* upon the filing of a petition to appoint a conservator or guardian. The Court may, however, waive the appointment of a guardian *ad litem* for good cause in accordance with Tenn. Code Ann. § 34-1-107.

(b) The Court may appoint a guardian *ad litem* in matters involving the following: the sale, improvement, or mortgage of any real property in which a minor or other person under disability has an interest, the sale or disposition of a ward's personal property, possible impropriety by a fiduciary, or unauthorized encroachments or questionable management of a ward's assets under guardianships or conservatorships. The Court may also do so any time it believes such an appointment is in the best interest of a minor, incompetent, absentee, or interested party or necessary to further the administration of justice.

(c) The guardian *ad litem* shall conduct an inquiry and file a report with the Court at least three (3) days before the hearing. The report shall contain the information required by statute and these rules and such additional information as the Court may require or the guardian *ad litem* deems necessary. Reports shall be brief and to the point unless the complexities of the case require greater detail. [Adopted effective September 1, 2017.]

Sec. 16.06. Orders of Appointment

All orders appointing a guardian or conservator shall contain the information required by appropriate statute and these rules, including the ward's full name and date of birth. The order shall also require or, with the requirement of an annual report, waive an inventory and property management plan within sixty (60) days and an annual accounting. Where required, bonds must be executed prior to the issuance of letters by the Clerk. Forms that provide for most of the requirements can be obtained from the Clerk's office but must be modified to meet the facts of each individual case. Orders appointing a representative shall adjudge the Clerk's cost. [Adopted effective September 1, 2017.]

Sec. 16.07. Subsequent Orders

(a) Unless other matters are pending, orders approving accounting, sale of real estate, or similar matters shall include provisions closing the matter pending further proceedings and assessing costs.

(b) If an annual accounting is not required, an Annual Report shall be required each year and the Clerk shall send notice when the Annual Report is due. The Annual Report shall contain information as to the condition and location of the ward as well as other information as may be requested by the Clerk, such as the identity and relation, if any, of the caregiver to the ward, and required by law. [Adopted effective September 1, 2017.]

Rule 17. Probate

Sec. 17.01. Hours

The daily session of the Probate Division of Part 2 shall be from 9:00 to 10:30 a.m., Tuesday through Friday, and shall be by appointment only. Please call or e-mail the Probate clerks to set an appointment. [Adopted effective September 1, 2017.]

Sec. 17.02. Interested Parties

(a) Interested parties include a spouse, beneficiary, legatee, devisee, fiduciary, heirs, and income and remainder beneficiaries of a trust.

(b) Notice and service of process is not required for an interested party who joins in a petition as a petitioner or who files a sworn waiver or consent. [Adopted effective September 1, 2017.]

Sec. 17.03. Petitions

(a) A verified petition to probate a will, codicil, or other testamentary instrument or administer an intestate estate shall set forth such information as is required by statute and these rules. This information shall include the names, addresses, relationships of all legatees and devisees under the testamentary instruments, and the names of the surviving spouse and next of kin.

(b) Notice of petitions for elective share, year's support, homestead and exempt property shall be given to the personal representative of the estate, attorneys of record, and all interested parties, including creditors if the estate may be insolvent. If the personal representative is the surviving spouse, an Administrator *ad litem* shall be appointed. [Adopted effective September 1, 2017.]

Sec. 17.04. Common Form Probate

Petitions for probate in common form may be heard by the Court or the Clerk. Petitioner shall give notice to all interested parties before the hearing of the petition. [Adopted effective September 1, 2017.]

Sec. 17.05. Solemn Form Probate

Petitions for probate in solemn form shall be heard by the Court, after service of notice required by statute, at a time and date set by the Court. [Adopted effective September 1, 2017.]

Sec. 17.06. Small Estates

Estates coming within the provisions of the Small Estates Act may be heard by the Clerk or the Court. Bond shall be required in all small estates. [Adopted effective September 1, 2017.]

Sec. 17.07. Claims.

Verified claims must be filed with the Clerk in triplicate with any required supporting documents as provided by statute. The Clerk may decline to accept claims submitted without the statutory fee. [Adopted effective September 1, 2017.]

Sec. 17.08. Authority of Master

(a) Unless otherwise ordered by the Court, the Clerk and Master is authorized to act without a specific order of reference as follows:

- (1) hear applications for letters testamentary and of administration;
- (2) adjudicate probate claims and exceptions thereto;
- (3) determine year's allowance to surviving spouse and minor children;
- (4) preside over assignment of homestead;
- (5) determine elective share of surviving spouse; and
- (6) take and state all accounts and settlements.

(b) The Clerk and Master shall file a written report of findings and actions on the above matters.

(c) Rule 53 of the Tennessee Rules of Civil Procedure and LRCP 12 shall govern the procedures for Master's hearings and exceptions to or confirmations of Master's Reports. [Adopted effective September 1, 2017.]

Sec. 17.09. Inventories and Accountings

(a) Inventories and accountings may be waived if:

- (i) the Will so provides or

(ii) if all of the residuary beneficiaries or legatees file waivers excusing the personal representative from the requirement. If a residuary beneficiary is under a disability or the estate is insolvent, a final accounting cannot be waived. A Sworn Statement in Lieu of Final Accounting is required even if accountings are waived.

(b) Sworn Statements in Lieu of Final Accounting shall comply with all the requirements of the statutes and shall state the gross taxable value of the estate. Approval of personal representative fees and attorney fees may be included in the Sworn Statement.

(c) Notice of the filing and taking of an accounting must be as provided by law.

(d) The final accounting shall bear a certificate of the personal representative that the estate has been distributed in accordance with the instrument admitted to probate, or, in intestate cases, in accordance with the laws of descent and distribution.

(e) Upon failure to file accountings within the time required by law, the Court may revoke letters issued to a personal representative and appoint the Public Administrator or a successor personal representative.

(f) If an estate is not closed within two (2) years from the date of qualification of the personal representative, additional time to file accountings will be granted only upon motion and notice to interested parties. [Adopted effective September 1, 2017.]

Sec. 17.10. Summary Removal and Sanctions

Failure to comply with statutory requirements or orders of the Court shall constitute grounds for summary removal of the personal representative. In addition, the Court may impose sanctions, such as forfeiture of earned fees and taxation of fees and costs against the defaulting party and its surety. [Adopted effective September 1, 2017.]

Sec. 17.11. Fees and Expenses

(a) Court approval of legal fees and expenses is required in all circumstances unless:

- (i) they are approved in writing by all interested parties or their legal guardians; and
- (ii) they do not exceed the percentages of the estate value set out in one of the following schedules, which are presumed reasonable in the absence of objection:

Gross Estate		Schedule 1	Schedule 2	Schedule 3
1st	20,000	5%	2.5%	1.25%
next	80,000	4%	2.0%	1.0%
next	150,000	3%	1.5%	0.75%
next	500,000	2%	1.0%	0.5%
over	750,000	1%	0.5%	0.25%

"Gross estate" for this purpose is the gross estate for inheritance tax purposes.

(b) Legal Fees and Expenses:

(1) apply Schedule 1 if the personal representative is not regularly engaged in the business of administering estates or

(2) apply Schedule 2 if the personal representative is regularly engaged in the business of administering estates.

(c) Personal Representative Fees and Expenses:

(1) apply Schedule 1 if the personal representative is regularly engaged in the business of administering estates or

(2) apply Schedule 3 if the personal representative is not regularly engaged in the business of administering estates.

(d) If fees and expenses have not been properly approved as required by this rule or if objections are filed by motion, the Clerk shall, on reference, determine a reasonable fee and report such to the Court. [Adopted effective September 1, 2017.]

Sec. 17.12. [Deleted]

Compiler's Notes. Rule 17, section 17.12 was renumbered as Rule 17, section 17.11 effective September 1, 2017.

Rule 18. Sale of Real Property

Sec. 18.01. Property Description

Complaints seeking a sale by partition, general lienor's suits, and all other actions to sell real property shall set forth the complete legal description and the street name and number of the property. [Adopted effective September 1, 2017.]

Sec. 18.02. Orders Authorizing Sale

Unless otherwise specifically directed by the Court, all orders for the sale of property shall:

- (a) state that the sale will be held on the western side of the Hamilton County Courthouse by public outcry to the highest bidder for cash, and

(b) include the following information:

- (1) map-parcel-group number,
- (2) street address or, with a statement that no street address is available, designation of the nearest intersection of public streets or roads, and
- (3) complete legal description of the property. [Adopted effective September 1, 2017.]

Sec. 18.03. Advertisements

The Clerk, in advertising the sale of real property, shall set out the street address, if available, as well as the description as set forth in LRCP 18.02(b). [Adopted effective September 1, 2017.]

Sec. 18.04. Orders Confirming Sale

Unless otherwise specifically directed by the Court, all orders confirming the sale of property shall:

(a) attach as an exhibit expressly incorporated in the order by reference the property description required by LRCP 18.02(b);

(b) contain the address of each grantee;

(c) contain the name and address for the mailing of tax bills; and

(d) direct the Clerk to make the following disbursements, where applicable:

- (1) appraisal fees;
- (2) attorney fees;
- (3) brokerage fees;
- (4) claims or encumbrances such as mortgages, notes and liens;
- (5) closing costs;
- (6) commissions on real estate;
- (7) court costs;
- (8) court reporter fees;
- (9) deed preparation and filing;
- (10) delinquent taxes;
- (11) guardian *ad litem* fees;
- (12) property insurance prorated;
- (13) recording fees;
- (14) rents prorated to closing date;
- (15) revenue stamps;
- (16) survey fees;
- (17) taxes prorated current to closing date;
- (18) title insurance ordered and paid for; and
- (19) balance of funds to listed recipients with their complete names, addresses, social security numbers, and percentage of balance of funds to each. [Adopted effective September 1, 2017.]

**LOCAL RULES OF PRACTICE
GENERAL SESSIONS COURT
CIVIL & CRIMINAL
HAMILTON COUNTY, TENNESSEE**

Effective April 1, 2014

RULE.

1. Authority and abrogation of former rules
2. Rules of professional conduct
3. General sessions court assignments and dockets
4. Courtroom decorum, procedures and appropriate attire
5. Representation and attorneys
6. Courtroom security
7. Security of chambers and adjacent areas
8. Civil case dockets
9. Civil case continuances

RULE

10. Language interpreters
11. Garnishments
12. Criminal case dockets
13. Criminal case continuances
14. Compliance docket
15. Subpoenas
16. Service of process
17. Plea agreements
18. Bail bond
19. Forfeiture/property seizure warrants
20. Restricted driver's license

Rule 1. Authority and abrogation of former rules

As set forth herein, the Local Rules of Practice for General Sessions Court of Hamilton County, Tennessee are hereby adopted pursuant to the authority of Tenn. Code Ann. § 16-15-406 and § 16-15-714. All former local rules of practice are hereby void, except as readopted herein. Each rule is applicable to all General Sessions Court matters, whether civil or criminal, unless otherwise specified by rule. The purpose of these rules is to facilitate the just determination of every proceeding in this court by securing consistency, simplicity in procedure, impartiality and fairness in administration, while eliminating unjustifiable expense and delay. [As adopted effective April 1, 2014.]

Rule 2. Rules of professional conduct

The ethical standards for the practice and the administration of law in General Sessions Court shall be governed by the *Tennessee Court Rules Annotated*, *Rules of the Supreme Court*, and Rule 8, "Rules of Professional Conduct." [As adopted effective April 1, 2014.]

Rule 3. General sessions court assignments and dockets

Hamilton County General Sessions Court operates five courtrooms, all of which are located on the second floor of the Hamilton County-City Courts Building. The five General Sessions Court judges rotate each week to one of the five courtrooms, as indicated on the dockets.

A. Upon arrest, criminal defendants are rotationally assigned by computer to one of the five judges, and remain assigned to that judge so long as that defendant's case(s) are pending or otherwise subject to a probationary period. Where two or more defendants are co-defendants on a matter, the co-

defendants will be reassigned to the judge who was first assigned to a co-defendant.

B. The dockets for the Criminal Divisions of General Sessions Court shall be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Criminal Division, in the Hamilton County-City Courts Building. The dockets for the Civil Division of General Sessions Court shall be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Civil Division. Both civil and criminal dockets can be found online at the following website: www.hamiltontn.gov/courts/sessions/default.aspx.

C. Docket scheduling shall be done through the offices of the General Sessions Court Clerks, Criminal and Civil Divisions, both of which are located on the first floor of the Hamilton County-City Courts Building. Unless changed by the presiding judge because of necessity or convenience, the schedules of the courts are:

(1) Criminal cases commence in Courtrooms 1, 3 and 4 at 8:30 a.m. Monday through Friday, except as closed for holidays and as otherwise set forth by Court order. A lunch recess may be taken at noon, or as otherwise determined by the presiding judge.

(2) The Domestic Violence docket is heard each Monday at 8:30 a.m. in Courtroom 3.

(3) Courtroom 5 is reserved each Monday for domestic violence victims, witnesses and related programs/resources.

(4) The criminal settlement and compliance dockets are held Monday through Thursday at 1:30 p.m. in Courtrooms 1, 3 and 4.

(5) Mental health hearings are conducted each Thursday at 9:00 a.m. for Valley Hospital commitments via video conferencing and at 10:00 a.m. at Moccasin Bend Mental Health Institute.

(6) All civil matters commence in Courtroom 6. Each Monday, the detainer docket commences at 8:30 a.m. First settings of all other civil cases are set for Monday at 11:00 a.m. for purposes of scheduling a trial date, dismissal, settlement, or entry of default judgments only. All motions shall be heard at 11:30 a.m. on Monday. Civil trials are scheduled at 9:00 a.m., Tuesday through Friday, commencing in Courtroom 6 and delegated between Courtrooms 5 and 6 as deemed appropriate by the judge presiding in Courtroom 6. [As adopted effective April 1, 2014.]

Rule 4. Courtroom decorum, procedures and appropriate attire

A. At the opening of each session of court, everyone shall rise and remain standing until the court officer formally opens court. The area within the bar is reserved for attorneys, court personnel, officers, and participants in the case immediately before the Court. All other people shall be seated outside of the bar. Although the gallery is open to the public, the Court may exclude any persons from court if they are found disruptive or as otherwise determined appropriate for the safety of the court.

B. The behavior of all participants, attorneys, witnesses, and spectators shall conform to strict standards of decency, dignity, etiquette, and propriety. Everyone shall remove hats and sunglasses before entering the courtroom. Demonstrations, acts of misconduct, loud talking, or any disruption shall not be permitted inside or outside the courtroom.

C. While in the courtroom, all electronic and/or cellular devices must be turned off and shall not be utilized by anyone except attorneys and court personnel as necessary. Upon notice to the presiding judge, audio recordings are permitted by attorneys as authorized by T.C.A. § 20-9-104.

D. The conduct and attire of all attorneys and court attendants shall be professional business attire and shall conform to the professional dignity expected of officers of the court. All persons having matters before the Court, or otherwise in attendance, must be dressed appropriately, which shall exclude shorts, halter tops, bare midriffs, see-through attire, muscle shirts or tank tops, clothing with written or demonstrative obscenity, pornography or profanity. No clothing shall be allowed that exposes undergarments or any intimate body part.

E. All attorneys shall note their representation on civil warrants and criminal warrants, and shall appear at the client's designated court time, unless the attorney notifies the Court of his/her whereabouts.

F. Attorneys shall rise and remain standing, if able, when addressing the Court, making a statement, argument, or objection to the Court or questioning a witness.

G. The defendant shall be seated at the defense table or stand before the bench during any hearing or trial, as ordered by the presiding judge. Spectators may use unoccupied seats on first come, first served basis. Standing will not be permitted in the audience unless absolutely necessary.

H. The court officer and other officers serving General Sessions Court shall be responsible for enforcing courtroom rules, procedures and decorum. [As adopted effective April 1, 2014.]

Rule 5. Representation and attorneys

A. Attorneys representing litigants must be licensed to practice law in the State of Tennessee pursuant to the *Tennessee Court Rules Annotated*, *Rules of the Supreme Court*, Rules 7 & 9, and in good standing with the State Board of Professional Responsibility. Appearances Pro Hac Vice shall be governed by Rule 19 and related rules and regulations.

B. Individuals may represent themselves and/or a business that he/she owns, so long as said business is not incorporated. Incorporated businesses and partnerships, including LLCs and LLPs, must be represented by a Tennessee licensed attorney at all court appearances.

C. Attorneys seeking judgments for attorney's fees in default cases must, in addition to proof of debt, attach a copy of the contract allowing for attorney's fees with the appropriate provision highlighted. [As adopted effective April 1, 2014.]

Rule 6. Courtroom security

A. Each division of General Sessions Court shall have at least two (2) court officers, one (1) jailer, and one (1) deputy clerk in attendance at all times while court is in session.

B. All persons entering the courthouse must proceed through security, are subject to search and must discard any items that security deems reasonable. [As adopted effective April 1, 2014.]

Rule 7. Security of chambers and adjacent areas

A. In order to ensure safety of judges, officers and all personnel of the General Sessions Courts, the General Sessions Court corridor and offices, which area includes the City Court offices, are restricted from access to the public or other persons who are not specifically assigned to an office or the area, i.e., General Sessions Court judges, administrators, officers or as otherwise permitted entrance upon request through the main corridor door, which provides video and intercom monitoring of entrants.

B. Access to the corridor and/or courtrooms from the side door or any back doors to the courtrooms is prohibited by any unauthorized persons. Only General Sessions Court judges, administrators and officers may use for any purpose the kitchen/lunch area, except as permitted by the Judge. The hallway immediately behind each particular courtroom may be used for plea negotiations if other designated areas herein are unavailable and permission is granted by the Court.

C. The Hamilton County Sheriff's Department shall enforce these policies and procedures to ensure the integrity of the secured area. [As adopted effective April 1, 2014.]

Rule 8. Civil case dockets

A. Civil cases shall be docketed not less than five (5) days from the date of service of the civil warrant, unless an earlier date is agreed upon by all participants, or mandated by law.

B. Civil warrants filed on a pauper's oath shall be accompanied by a completed Affidavit of Indigency, which is available at the Court Clerk's office. The Court may require the affiant to appear and answer questions before ruling on the application.

C. Motions to set installment payments, i.e. slow pay motions, on judgments and motions to stay executions of garnishments shall be filed in duplicate by the defendant or defense counsel, signed by the defendant and sworn to before a notary or the Court Clerk. The hearing will be set not less than five (5) days after the filing date, and a copy of the motion immediately mailed to the adversary party by the defendant or defense counsel. It is the burden of the defendant to show income and all expenses for the Court to determine a payment plan, if any, which may be paid within a reasonable period of time.

D. Service of process shall be accomplished as soon as possible after receipt of the civil warrant by the serving officer and return made not less than five (5) days before the trial date to the Court Clerk, unless otherwise provided for by law. [As adopted effective April 1, 2014.]

Rule 9. Civil case continuances

A. If the plaintiff appears and the defendant fails to appear at the scheduled appearance at the 11:00 a.m. docket or other trial date, the plaintiff's proof will be heard, or submitted by affidavit, and a default judgment entered by the Court.

B. If the defendant appears and the plaintiff fails to appear at the Monday 11:00 a.m. docket or scheduled trial, the case will be dismissed and costs taxed to plaintiff.

C. If both parties fail to appear for the first setting on the 11:00 a.m. Monday docket, the case shall be continued until the following Monday; if neither party appears at the second hearing, the case shall be dismissed with costs assessed to plaintiff.

D. When both parties fail to appear for a trial and the Clerk of Court of General Sessions, Civil Division, does not receive a request for a continuance from either party, the case shall be dismissed and costs assessed to the plaintiff.

E. Either party may file for the disposition to be set aside if filed within ten (10) days; however, it is within the discretion of the judge whether to grant said motion. The plaintiff may have a continuance to present evidence through witnesses in collection cases filed on sworn statements if a defendant enters a sworn denial in the presence of the judge on the trial date. [As adopted effective April 1, 2014.]

Rule 10. Language interpreters

Pursuant to Supreme Court Rule 42, the appointing of a language interpreter is a matter of judicial discretion. If the Court determines that justice requires an interpreter to be appointed, said appointment and scheduling of the interpreter shall be coordinated with the General Sessions Court Administration Office. Pursuant to Supreme Court Rule 42, Section 7(a), the costs for the interpreter shall be taxed as court costs to whichever party the Court deems appropriate. In the event an indigent party is taxed with the court costs, the Court may exercise its discretion to waive said costs.

Cases involving an interpreter will be heard at the beginning of the docket provided the interpreter is prepared for trial.

Foreign language interpreters will be provided for parties involved during criminal in-court proceedings if sufficient notification is made to the Court Administration Office. The court does not pay for post-adjudication interpretation.

Foreign language interpreters are paid by the Administrative Office of the Courts, if the defendant is declared indigent by the Court. In the event the defendant is not declared indigent, interpretation is taxed with the court costs. The Court may exercise its discretion to waive said court costs due to indigency.

Interpreters will be present thirty (30) minutes prior to the scheduled court appearance. [As adopted effective April 1, 2014.]

Rule 11. Garnishments

A. An execution may be issued only on the written garnishment application by the plaintiff, the plaintiff's attorney or agent of record. Applications must:

- (1) Be completely filled out to be accepted by the Court Clerk;
- (2) Show the amount of the unpaid judgment for each case;
- (3) Interest may be claimed.

B. Garnishments shall be released upon authorization of a judge.

C. First or subsequent Petitions to Pay by Installments ("slow pay") shall be set for a court hearing to determine good cause. The Court Clerk shall not issue any Stay of Garnishment until the Court determines good cause and approves the Petition to Pay by Installments.

D. Motions to stay executions of garnishments shall be:

- (1) Filled out in duplicate by the defendant or defense counsel;
- (2) Signed by the defendant;
- (3) Sworn to before a notary or the Court Clerk before filing;
- (4) May be set for hearing not less than five (5) days after the filing date. The defendant or defense counsel must immediately mail a copy of the motion with the hearing date to the adversary;
- (5) All monies received through garnishments shall be paid to the Clerk of Court.

E. The Clerk of this Court may issue a writ of possession at any time up to sixty (60) days from the date of judgment in an unlawful detainer case. No writ shall issue after sixty (60) days unless ordered by the Court. [As adopted effective April 1, 2014.]

Rule 12. Criminal case dockets

A. All defendants have the duty to:

- (1) Know when they are scheduled to appear in court;
- (2) Appear at each hearing, trial setting, subsequent settings, report back dates or as otherwise ordered by the Court;
- (3) Be physically present during each hearing or trial unless:
 - a. Waived in advance by the defendant in writing;
 - b. Ordered by the Court.

B. Failure to appear as set forth above may constitute contempt of court and may constitute a separate criminal offense.

C. All defendants shall behave in an orderly, dignified manner. Failure to do so may result in the removal of the defendant from the courtroom pursuant to the *Tennessee Court Rules Annotated, Rules of Criminal Procedure*, Rule 43. [As adopted effective April 1, 2014.]

Rule 13. Criminal case continuances

A. The first time a case is set for trial it may be continued for good reason within the sound discretion of the judge, upon defendant's request in open court, unless excepted by the assigned judge for good cause. The second or subsequent time it is set for trial it will be continued only for compelling reasons. The following are NOT deemed compelling reasons, but may be considered within the discretion of the judge:

- (1) The client has not paid the fee;
- (2) The client has not been to see the attorney;
- (3) Lack of preparation;
- (4) Any other reason that was previously known or should have been known.

B. Only the assigned judge may grant continuances. It is the responsibility of the requesting party to notify the other side of said continuance in advance so that witnesses shall be notified as soon as possible.

C. Unless good cause is shown, all cases shall be disposed of within 120 days. [As adopted effective April 1, 2014.]

Rule 14. Compliance docket

A. The Court may place criminal cases on a Compliance Review Docket after pronouncing judgment, if:

- (1) The defendant does not immediately pay into the Court Clerk's Office all fines levied and court costs assessed and due in full;
- (2) The defendant has been ordered into treatment, to make restitution, or must complete a program or school as a condition of probation;
- (3) The defendant has been placed on supervised probation; or
- (4) At the Court's discretion.

B. If the defendant has been found by the Court to have a present financial inability to pay in full all fines and costs due, the Court may order the defendant to set up a payment plan with the Clerk's Office with full payment by a date certain. Defendants who fail to pay fines will have driving privileges revoked as provided by law. Additionally, failure of a defendant to make monthly payments or complete any other condition of probation as ordered may result in the defendant's probation being revoked and/or continued.

C. If defendant fails to appear at a compliance review, the Court may issue a probation violation warrant and the defendant may be criminally charged for Failure to Appear. [As adopted effective April 1, 2014.]

Rule 15. Subpoenas

A. Unless otherwise ordered by the Court, subpoenas shall be issued not less than seven (7) days prior to the trial date in all civil cases and criminal cases.

B. Unless otherwise ordered by the Court, it is the duty of the respective parties to subpoena their witnesses. Failure of subpoenaed witnesses to appear may be grounds for a continuance and a Show Cause may be issued ordering said witnesses to appear on the next court appearance and/or face contempt of court. [As adopted effective April 1, 2014.]

Rule 16. Service of process

A. A civil warrant, or any leading process used to initiate an action in General Sessions Court, and subpoenas or summons may be served by any person designated by the party, or the party's attorney if represented by counsel, who is not a party to the action and is not less than eighteen (18) years of age. Service of other process, post judgment writs, levies, garnishments and executions shall be by the Sheriff, or the Sheriff's designee, as provided by law.

B. The General Sessions Court Clerk shall issue process as provided by law, however, the Clerk shall not knowingly issue process to a process server who has had a felony conviction. The clerk issuing the process shall note the issue date upon the process. The Clerk shall keep information, to be designated by the Court, for the purpose of contacting all private process servers in the event there is a question about the service.

C. Return shall be made to the Court Clerk not less than five (5) days before the trial date unless otherwise provided by law. Return made less than five (5) days before the trial date will result in the trial date being set one week later on the civil docket. All signatures shall be accompanied by the printed name. The return shall have as a minimum the following legible annotations:

- (1) The printed name of the person served. (If possible, the served party should sign the process);
- (2) Printed names of the persons(s) the server was not able to serve;
- (3) Date of service;
- (4) If all required parties were not served, a brief reason for non-service;
- (5) Court date and time. [As adopted effective April 1, 2014.]

Rule 17. Plea agreements

All plea agreements shall be accompanied by a written plea agreement which may consist of the original warrant with the appropriate language reflecting the disposition of the case. All plea agreements shall be signed by the Defendant. This rule shall not apply to C misdemeanors. [As adopted effective April 1, 2014.]

Rule 18. Bail bond

A. All bail issues shall be in conformity with the "Release from Custody and Bail Reform Act of 1978" and all amendments thereto.

B. Any capias issued pursuant to a forfeiture, either conditional or final, shall remain in effect until the defendant is apprehended and returned to custody and a disposition is made of the case.

C. Bondsman shall be released from their obligation under the Bail Bond Reform Act pursuant to T.C.A. § 40-11-138 and T.C.A. § 40-11-130. Specifically, a bondsman shall be released when the defendant's case is passed (a) on good behavior; (b) to pay costs; or (c) to do public works or community service.

D. Bondsman shall be released if the defendant has fled to a state that will not extradite or if it is a case in which Tennessee will not proceed with extradition. Bonding companies which are incorporated must be represented by an attorney except as provided by T.C.A. § 49-11-137(b)(3).

E. Any surrender of a defendant by a bonding company shall be in compliance with T.C.A. § 40-11-130 through § 40-11-137. [As adopted effective April 1, 2014.]

Rule 19. Forfeiture/property seizure warrants

Pursuant to T.C.A. § 40-33-204, Probable Cause Hearings for the issuance of Forfeiture Property Seizure Warrant will be heard in Courtroom 4 and will be recorded, filed and maintained by the Attorney General's office. A certified copy of the recording shall be made available upon request of any party and shall be admissible as evidence. [As adopted effective April 1, 2014.]

Rule 20. Restricted driver's license

All requests for issuance of a restricted driver's license shall be heard by the assigned judge, if available. All paperwork and files relating to restricted driver's licenses shall be maintained in the Criminal Division of the General Sessions Court Clerk's office. [As adopted effective April 1, 2014.]

LOCAL RULES OF PRACTICE IN THE CRIMINAL COURT, HAMILTON COUNTY

ADOPTED SEPTEMBER 1, 2007

TABLE OF CONTENTS

RULE.		RULE.	
1.	Adoption, citation, purpose, and suspension of local rules of practice	I.	Petitions for approval
2.	Grand juries	II.	Collateral
3.	Allocation of cases	III.	Limits
4.	Management of cases	IV.	Forfeitures
5.	Schedules	V.	Surrenders
6.	Pre-trial deadlines	VI.	Final judgments
7.	Preparation and dissemination of orders	VII.	Company changes
8.	Records	VIII.	Notices
9.	Appearance and withdrawal of defense counsel	IX.	Court schedule
10.	Conduct in the courtroom	X.	Receipts
11.	Operation of media	XI.	Business license
12.	Bail and relief from forfeiture	XII.	Complaints
Appendix.	Bonding Company Rules and Regulations	XIII.	Clerk fees
		XIV.	Miscellaneous
		XV.	Amendments
		XVI.	Noncompliance
		XVII.	Enforcement

Compiler's Notes. These rules are effective as of September 1, 2007, and supersede all existing local rules of practice. See L. R. Crim. P. 1.

Rule 1. Adoption, citation, purpose, and suspension of local rules of practice

Effective 1 September 2007, the Criminal Court of the Eleventh Judicial District (Hamilton County), Tennessee, abrogates all existing local rules of practice and adopts these rules. Citations to these rules may be in the form "L. R. Crim. P."

The purpose of these rules is to facilitate the just determination of every criminal proceeding in this Court by securing simplicity in procedure and fairness in administration and eliminating unjustifiable expense and delay and unnecessary claims on the time of jurors. judge may suspend the rules as justice requires or enter a scheduling order in a particular case that sets deadlines other than those set forth herein. [As adopted effective September 1, 2007.]

Rule 2. Grand juries

Each judge shall preside over the grand jury for a term of four (4) months each year. At the beginning of each term, the presiding judge shall empanel two grand juries, a regular jury and a concurrent jury. The grand juries shall serve for the entire term, unless they are discharged earlier. During the term,

the presiding judge shall have exclusive jurisdiction of cases before the grand jury.

The first session of each grand jury shall begin on the day it is impaneled and continue until it completes its assignment and reports to the presiding judge. Thereafter, it shall convene at least one day each week, as designated by the presiding judge, and continue in session until it completes its assignment and reports to the presiding judge.

Subject to the direction of the presiding judge, the clerk shall schedule cases within two weeks when possible but, in any event, as soon as possible after the office of the clerk receives the bound-over warrant. Jail cases shall receive priority. [As adopted effective September 1, 2007.]

Rule 3. Allocation of cases

As the grand jury reports, the clerk shall alphabetize all indictments and presentments by the name of the defendant or, in cases involving multiple defendants, by the name of the first defendant and enter the cases in a program that numbers the cases and allocates them among the three divisions of the Court. If a single defendant has multiple cases or multiple indictments or presentments charge different defendants with the same offense or with offenses arising from the same transaction, the program shall group all indictments or presentments for the defendant or defendants with the lowest-numbered case and thereafter treat the group as a single case for the purpose of allocation.

With the exception of requests for extraordinary relief, which shall be resolved by the judge to whom the request is directed, the three divisions of the Court shall share equally the responsibility of hearing non-jury and appeal cases. The clerk shall docket all non-jury and appeal cases not otherwise provided for in these rules in the order in which they are received and shall allocate such cases weekly, with each division receiving every third case. In the event that a single defendant has multiple cases, the clerk shall treat all cases for that defendant as a single case for the purpose of allocation.

After the allocation of new cases, the clerk shall prepare an arraignment docket for each division of the Court. Each arraignment docket shall contain all new cases for that division as well as any other cases restored to the docket by the apprehension of the defendant or another event, all cases continued or specially set, and all non-jury and appeal cases not otherwise set. [As adopted effective September 1, 2007.]

Rule 4. Management of cases

At arraignment, the court will assign a court date for plea or further assignment of the case. For good cause, the court may assign additional plea or assignment dates. At the final plea or assignment date, if the defendant does not plead, the court will set the case for trial.

Once a case is set for trial, the court will not accept any settlement except for good cause, which shall be brought to the court's attention as soon as practicable before the trial date(s). On the trial date, the case may be resolved only by trial, the state's motion for dismissal with prejudice, or the defendant's plea of guilty to the charge(s).

For good cause, the court may grant a continuance. Whether absence of a witness is such cause depends on compliance with provisions of Rule 9 of these rules and Tenn. R. Crim. P. 17 regarding subpoenas. At the time of any continuance, the court will assign a new trial date. [As adopted effective September 1, 2007.]

Rule 5. Schedules

Jury trials will usually be set to begin at 9:00 a.m. on Tuesday or Thursday. Non-jury matters will usually be heard as follows:

Division I:

Arraignments and assignments: 8:30 a.m., Wednesday; 9:00 a.m., Friday;
Bench trials: Designated hour, Monday through Thursday;
Motions: 9:00 a.m., Monday;
Pre-trial conferences: Designated hour, Monday through Thursday;
Suspensions of sentence: 9:00 a.m., Monday;

Division II:

Arraignments and assignments: 8:30 a.m., Friday;
Bench trials: 1:30 p.m., Monday;
Drug court: 1:30 p.m., Monday;
Motions: 8:30 a.m., Monday;
Settlements: 8:30 a.m., Tuesday, Wednesday, and Thursday; and

Division III:

Arraignments and assignments: 9:00 a.m., Friday;
Bench trials: Designated hour, Monday through Thursday;
Motions: 9:00 a.m., Monday;
Suspensions of sentence: 9:00 a.m. or designated hour, Monday through Thursday.

[As adopted effective September 1, 2007.]

Rule 6. Pre-trial deadlines

The parties shall file any motion that requires a pre-trial hearing in sufficient time for the court to hear the motion on a regular motion day before trial. Before filing a motion to compel discovery, counsel shall seek to resolve each discovery dispute with adverse counsel.

A party who intends to offer an aural or visual recording as evidence in its case in chief in a jury trial shall so notify all other parties in writing and file a copy of the notice at least twenty (20) days before trial. Counsel may review the recording in the form in which the offering party intends to offer it and may copy the recording at his or her expense. If counsel has any objection to the recording, he or she shall promptly advise counsel for the offering party and counsel shall attempt to resolve the objection. If they cannot do so, counsel for the objecting party shall file a motion *in limine* in sufficient time for the court to rule on the matter before trial and the offering party to complete any necessary editing.

The parties shall request any subpoena in sufficient time for the clerk or other court officer to issue the subpoena at least fifteen (15) days before trial or deposition. The sheriff shall return the subpoena at least five (5) days before trial or deposition.

A defendant who intends to assert a defense of insanity to the charge(s) shall so notify the district attorney general in writing and file a copy of the notice at

least ten (10) days before trial. A defendant who intends to offer expert testimony regarding a mental disease, defect, or condition of the defendant bearing on the issue of his or her guilt shall so notify the district attorney general in writing and file a copy of the notice at least ten (10) days before trial.

The parties shall file any special request for jury instructions before jury selection begins. If an issue is not then apparent, the parties shall file any such request as soon as practicable thereafter. [As adopted effective September 1, 2007.]

Rule 7. Preparation and dissemination of orders

The judge shall prepare most orders and judgments, except judgments of conviction, which the prosecutor shall prepare. In some cases, the judge may direct the clerk or a party to prepare an order or allow a party to submit an order. When a party prepares an order, the party shall include spaces for the signatures of all parties or counsel on the left margin under the space for the signature of the judge. The same party who prepares the order shall sign it and submit it to other parties or counsel for their approval. If any party fails to agree that the order accurately states the judgment of the court, the party who prepares the draft shall so indicate on the draft and submit it to the judge. The party who disagrees with the accuracy of the draft may then prepare and submit his or her own draft to the judge. The judge shall then choose one of the drafts or prepare his or her own order. A party submitting a draft of an order shall submit the original with a copy for each adverse party.

It is the duty of the clerk to notify all parties of the entry of written orders and judgments by providing them with a copy thereof. It is also the duty of the clerk to notify any person who has a duty to execute any part of the order or judgment, *e.g.*, the sheriff, the department of correction, a probation officer, or a court reporter, and any other person for notice to whom the order or judgment provides. [As adopted effective September 1, 2007.]

Rule 8. Records

The clerk shall, at all times, have custody and control of the records of the Court and be responsible for their safekeeping. No one other than the clerk or a deputy clerk may remove a record from a case file. Counsel in a case may withdraw the case file from the clerk's office on receiving the clerk's permission and furnishing the clerk with a receipt. No one may withdraw a case file for the purpose of taking it to the courtroom except the judges of the Court, the clerk or deputy clerks, or, with the permission of the clerk, attorneys. [As adopted effective September 1, 2007.]

Rule 9. Appearance and withdrawal of defense counsel

An attorney becomes counsel of record by appearing for a defendant in open court without announcing that he or she is appearing for a special purpose only, by filing any pleading or motion for a defendant without expressly limiting the appearance, or by receiving an appointment from the court.

An attorney of record may only withdraw from a case by filing a written motion to withdraw and, in open court, obtaining permission to withdraw. To a motion to withdraw, counsel shall append a notice of the date and time of the

hearing and the defendant’s obligation to attend and a certificate of service on the defendant, any surety, and the state. In addition, the clerk shall notify any surety of the defendant’s obligation to attend the hearing. [As adopted effective September 1, 2007.]

Rule 10. Conduct in the courtroom

The space within the bar is, at all times, reserved for members of the bar, officers of the court, the clerk, any witness in the witness box, and any person at a table whom the state or the defendant designates as a necessary aide. All other persons who are in the courtroom while court is in session shall be seated outside the bar in the space reserved for spectators.

While a case is pending before a jury and the jury is occupying the jury box or a jury room, no one, other than officers who are in charge of the jury and attorneys who are presenting or arguing a case, may stand, walk, or sit in the immediate vicinity of the jury box or jury room. While the judge is on the bench, no one, other than counsel, may walk between a counsel table and the bench.

Except for occupants of the tables and witness box, who may drink water within the bar, no one may consume food or drink or use tobacco products in the courtroom. Except as used by counsel in accordance with Tenn. Code Ann. § 20-9-104 and by the media in accordance with Rule 11 of these rules, the use of any recording device, aural or visual, in the courtroom is prohibited and the use of any communication device in the courtroom for a purpose other than aural or visual recording must be silent and brief. The presence of small children in the courtroom is discouraged, and counsel shall so apprise their clients and witnesses.

All persons shall stand when addressing the court, except those suffering from a physical or other disability and counsel when voicing an objection and having insufficient time to rise. [As adopted effective September 1, 2007.]

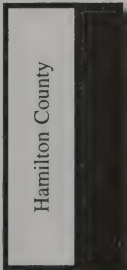
Rule 11. Operation of media

Media and their agents who record or broadcast in a courtroom shall understand and comply with Tenn. Sup. Ct. R. 30, which governs media access to public judicial proceedings in the courts of this state, prohibits the recording or broadcasting of certain participants, proceedings, and conferences, limits the number, sensitivity, and obtrusiveness of certain media devices and the number and conduct of the operators of such devices, and authorizes pooling arrangements. At no time may media record on or broadcast from the third floor of the City-County Courts Building, except, in compliance with Tenn. Sup. Ct. R. 30, in a courtroom or, on invitation, at the office of the district attorney general. [As adopted effective September 1, 2007.]

Rule 12. Bail and relief from forfeiture

No official may accept a personal check as a cash deposit in lieu of bail. Any official accepting a cash deposit in lieu of bail shall proceed as follows:

- (1) the official shall mark “cash bond” on the bond form;
- (2) the official shall have the defendant execute the bond form by signing it and inscribing his or her address thereon;



(3) the official shall ascertain the name and address of the depositor and inscribe them on the bond form; and

(4) the official, if other than the clerk or a deputy clerk, shall transmit the bond form with the deposit to the office of the clerk.

After a preliminary forfeiture on a bail bond and within one hundred eighty (180) days of the service on the surety or, if there is no service, the return of *scire facias*, the principal and surety may file a request for relief. Such requests shall be heard on the bond docket on the second Tuesday of the next month. All matters regarding forfeiture or relief on bail bonds shall be heard in open court on the last motion day of the month.

Any surety who is a professional bondsman within the meaning of Tenn. Code Ann. § 40-11-301(4) shall understand and comply with applicable provisions of Tenn. Code Ann. §§ 40-11-101—405. Professional bondsmen are also subject to additional rules of this Court that appear in an appendix hereto. [As adopted effective September 1, 2007.]

Appendix. BONDING COMPANY RULES AND REGULATIONS

I. Petitions for approval

A. All petitions for approval of a new company must be in a form similar to the one provided by the Criminal Court Clerk's office. Petitions must have a street address and business telephone number for the bonding company office. Bonding companies must have a business license.

B. Petitions for approval of a new company shall be heard by the Criminal Court Judges of the 11th Judicial District of Tennessee sitting en banc on the second Tuesday of each month. Petitions to be considered must be filed with the Criminal Court Clerk's office by four o'clock (4:00) P.M. two (2) weeks prior to the hearing.

II. Collateral

A. Effective September 1, 1997, any person filing a petition to open a professional bail bond company in Hamilton County is required to post a minimum of Forty Thousand Dollars (\$40,000.00) in cash with the Criminal Court Clerk, as security for bail bonds written. No real or other personal property collateral will be approved by the Court. An approved Bonding Company may post additional cash collateral in increments of \$1,000.00 with the Criminal Court Clerk at any time.

1. This collateral may be in the form of one or more Certificates of Deposit issued by a federally insured financial institution chosen by the Criminal Court Clerk. Such Certificate of Deposit shall be issued to the Criminal Court Clerk as Trustee for the bonding company, and shall require either the signature of both the Clerk and the owner of the company, or a Court Order, before being withdrawn.

2. A Certificate of Deposit shall not exceed a face value of \$10,000.00, and its term shall be for a period of time not to exceed one year. Any interest accruing on the Certificate of Deposit will not be considered as additional collateral and shall be paid by the financial institution to the bonding company upon

maturity of the Certificate. Any notices or statements issued by the financial institution shall be mailed to both the Criminal Court Clerk and the bonding company.

B. Those companies previously qualified with real estate posted as security with the Criminal Court Clerk must have on file current proof of ownership, a certified title search stating there are no liens on the property, an appraisal of such property with the Criminal Court Clerk, and certified proof that no taxes are due. The property appraisal must have been conducted within one year of the date of the filing and must be certified by a licensed property appraiser. Such proof of ownership, statement of liens and tax receipts must be filed annually along with the semi-annual report due July 15th, and each July 15th thereafter.

1. For the purpose of collateral, real property will have a maximum value, regardless of the appraisal, of \$25,000.00.

2. Effective July 15, 1995, no real property shall be accepted as collateral or security, nor shall there be any real property substitutions.

C. Any bonding company sold or transferred to another person for any reason must meet all guidelines and requirements in effect at the time of court approval as if for a new company, unless otherwise ordered by the Court for good and sufficient cause. The Court must approve all transfers and/or sales before any liability of the previous owner is released by the Court.

III. Limits

A. Any company approved by the Court, and operating on posted cash collateral may write total bonds in an amount equal to ten (10) times the amount of the cash collateral posted with the Criminal Court Clerk.

1. A bonding company may be allowed to write any one bond for any one person in an amount equal to one half (50%) of the total collateral posted.

B. A bonding company having real property posted as collateral, and complying with these rules, will be allowed a total bond limit in an amount equal to (a) ten times the appraised value of the property or (b) \$175,000.00, whichever is less.

C. The Criminal Court Clerk shall review all bonding companies' outstanding bonds, forfeitures, and final judgments on a monthly basis. The Clerk shall notify the Criminal Court Judges and the Sessions Court Judges and all jails within Hamilton County of those bonding companies that have exceeded their allowed limits.

1. A bonding company exceeding its total allowable bond limit shall be removed from the list of approved bonding companies. A company exceeding its limits shall not be allowed to write any bail bonds until the outstanding bonds are within the company's allowable limits.

IV. Forfeitures

A. The Criminal Court Clerk shall notify each bonding company of every forfeiture for which that company is responsible. Notices of forfeiture, or Scire Facias, shall be made available for each company to pick up on a weekly basis.

1. The bonding company shall pick up all Notices each week and shall sign and date a duplicate copy indicating date of receipt.

B. Bonding companies will be allowed total forfeitures in Hamilton County Sessions Court and Hamilton County Criminal Court, combined, in an amount equal to the amount of collateral posted.

1. Bonding companies that are within their forfeiture limit will be allowed 180 days beginning when the forfeiture was taken, within which to surrender the defendant to the Court, before a Final Judgment will be issued requiring the bonding company to pay the amount of forfeiture.

C. Bonding companies that have exceeded their forfeiture limit at the time of the monthly review by the Clerk shall be removed from the list of approved companies and shall not be allowed to write any bail bonds until the forfeitures are again within the company's allowable limits. A company has exceeded its forfeiture limit when the sum of conditional and final forfeitures in the Hamilton County Criminal Court plus the sum of final forfeitures in the Hamilton County General Sessions Court exceeds the amount of collateral posted and pledged with the Criminal Court Clerk.

D. No petition or request for relief on forfeited bail bonds will be considered in Criminal Court and/or Sessions Court unless such petition or request is accompanied by:

1. The duplicate copy of the receipt required by T.C.A. § 40-11-304; and

2. A sworn statement specifically describing any collateral security and its value, or a sworn statement that no collateral security was taken by a bonding company and/or its agent; and

3. A sworn statement describing any indemnity, guarantee, promissory note or any other agreement made by any person regarding reimbursement to the bonding company and/or its agent in the event of forfeiture, or a sworn statement that no such agreement exists; and

4. A sworn statement describing all monies paid to the bonding company and/or its agent regarding original bond and/or indemnity and any balance due, if any; and

5. A sworn statement describing any expenses actually incurred and paid by the bonding company and/or its agent with receipts of same attached; and

6. A sworn statement describing the last known address or location of the defendant.

E. In the event of a final forfeiture, upon the surrender of the defendant as a direct result of the bondsman's efforts, and for a period of time not to exceed two years from the date of forfeiture, the bondsman may file a Petition with the Court requesting a refund of the payment previously made to the Court. Any refund, and the amount of same, shall be in the sole discretion of the Court after a hearing. In no event will court costs paid by a bondsman pursuant to a final forfeiture be refunded by the Clerk.

V. Surrenders

A. A bondsman or his/her agent attempting to surrender his/her principal must comply with T.C.A. § 40-11-137.

1. All surrenders, including those done in open court, must be by means of a certified copy of the bail bond provided by the Criminal Court Clerk and filed with the Clerk. Pursuant to T.C.A. § 40-11-137, surrenders by a bondsman must be for good cause, and approved by the Court in which the case is pending.

B. The following procedures are to be followed for the surrender of a defendant when no *capias* has been issued for the defendant's arrest:

1. During normal business hours any bondsman wishing to surrender a defendant may get a certified copy of the original bond undertaking from the Criminal Court Clerk's office along with a Notice informing the defendant about the right to a surrender hearing.

2. After normal business hours, a bondsman may receive a certified copy of the bail bond from the annex office of the Criminal Court Clerk currently located at the Hamilton County Jail.

3. The defendant must be given a copy of the Notice and sign the Notice indicating its receipt. In the event that a defendant refuses to sign the Notice, the Hamilton County Sheriff or his/her representative may sign the Notice as a witness that the Notice was given to the surrendered defendant.

4. The defendant may then be surrendered to the custody of the Hamilton County Sheriff who shall sign the certified bond and then return the signed certified bond to the surrendering bondsman.

C. The surrender hearing shall be held on the morning following the surrender prior to the Court's regular docket.

1. The surrendering bondsman shall take the certified bond form signed by the Sheriff and the Notice signed by the defendant to the Court having jurisdiction over the matter. At that time the surrendering bondsman must be present and a sworn affidavit must be presented to the Court setting forth in detail:

- a. The reason(s) for surrender; and
- b. Any indemnity or guarantee received by the bonding company and/or its agent; and
- c. Any collateral or payment received by the bonding company and/or its agent, along with a copy of the receipt verifying the amount of payment.

D. The Court shall then determine whether the surrender was for good cause. If the Court finds that the surrender was for good cause, the Court shall approve the surrender by endorsement upon the certified bail bond or by other writing. If the Court finds that the surrender was not for good cause, it may order the defendant released upon the same undertaking, and/or impose any other conditions within its discretion as provided by law. The Court shall also make a finding of the amount, if any, of the premium to be refunded and to whom.

1. It shall be the duty of the surrendering bail bondsman to deliver the original court signed certified bond or other written approval to the Clerk in order to be relieved of responsibility.

E. A bonding company or agent wishing to surrender his or her principal must surrender that principal for each and every charge or case pending against that principal for which the company or agent has written a bail bond.

VI. Final judgments

A. Any final forfeiture judgment must be paid within thirty (30) days of the date of judgment. A company having an unpaid final forfeiture judgment at the end of thirty (30) days shall be removed from the approved list and not allowed to write bail bonds in Hamilton County until the judgment is paid and/or the Bonding Company is reinstated by Court Order.

1. In the event that a bonding company fails or refuses to pay a Final Judgment within the allowed thirty (30) days, the Criminal Court Clerk shall request a Court Order requiring an amount necessary to satisfy the judgment to be deducted from that company's collateral.

a. In the event that it becomes necessary for the Clerk to deduct the amount of judgment from the collateral, the bonding company must file a Petition with the Court requesting to be reinstated. The company must post with the Clerk such collateral as is then required as a minimum for a new company under the local rules before being reinstated as an approved company.

b. The Clerk must keep any remaining collateral until the bonding company has no outstanding bonds or forfeitures in Hamilton County. When the company has no further liabilities with any Court, the Clerk shall notify the company by certified mail of the amount of funds remaining and of the company's right to a return of such funds. If, after one hundred eighty (180) days, the company has not requested in writing a return of the balance of funds remaining on deposit, said funds shall be considered abandoned and shall become the property of the Hamilton County Criminal Court Clerk.

2. In the event that the collateral on deposit with the Criminal Court Clerk is insufficient to satisfy a judgment, the Clerk shall proceed with other legal means of collection in order to fully satisfy the judgment. This may include attaching other property of the bonding company, its trustee, and/or its owner.

3. The Clerk shall first apply payments of a final judgment to any costs incurred, including but not limited to reasonable attorneys' fees and publication expenses. Then the Clerk shall apply the payment to court costs and then to the final judgment.

VII. Company changes

A. Any changes to a bonding company's address and/or telephone number from that noted in the original petition must be made in writing and filed with the Criminal Court Clerk.

1. Until the bonding company notifies the Clerk of a change, the telephone number, etc., on file with the Clerk will be the information provided to and by the local jails within Hamilton County.

B. Requests for changes to a bonding company's name, ownership, or agent(s) must be submitted to and approved by the Court in writing, before any change becomes effective.

1. Changes to a bonding company's name, ownership, or agents, shall be heard by the Criminal Court Judges sitting en banc on the second Tuesday of each month.

a. Requests for ownership changes or the addition of an agent shall be filed with the Criminal Court Clerk no later than four o'clock (4:00) P.M. two weeks prior to the hearing.

b. Requests to delete an agent must be in writing and may be presented to the Court for its approval at any time by the Criminal Court Clerk.

VIII. Notices

A. All notices from the Criminal Court Clerk's office will be mailed to the bonding company and/or agent at the address last on record in the clerk's office.

1. In the Criminal Court Clerk's discretion, and upon notice to the approved bonding companies, copies of monthly reports detailing a company's outstanding bonds and forfeitures in Sessions Court and Criminal Court may be made available to the companies at the Criminal Court Clerk's Office in lieu of mailing same.

IX. Court schedule

A. Unless otherwise stated, all bonding matters in Criminal Court (settling forfeitures, additional time, petitions, etc.) shall only be heard in open court on the second Tuesday of each month at eight o'clock (8:00) A.M.

B. Unless otherwise stated, all bonding matters in Sessions Court shall only be heard in open court on each Friday at eleven o'clock (11:00) A.M.

C. Surrenders by a company and/or agent shall be heard in open court on the morning's docket next following the surrender.

X. Receipts

A. Every bondsman and/or agent must use at least duplicate carboned receipts to record all payments made by or on behalf of a defendant. A copy of the receipt must be given to the defendant. Receipts shall include:

1. A specific description of all property, including cash or checks, received from the defendant or someone acting on defendant's behalf, and
2. The signature of the defendant or someone acting on his/her behalf, and
3. The balance, if any, due and the terms of paying such balance.

XI. Business license

A. Each bonding company must have a valid and current business license. A copy of the license and receipt of payment for same must be filed with the Criminal Court Clerk on an annual basis each January 15th.

XII. Complaints

A. Any person may file a complaint against a bonding company and/or its agent. Forms are available from the Criminal Court Clerk.

1. Complaints must be in writing, must be legible, and include:
 - a. The printed name of the person making the complaint; and
 - b. The printed full address and telephone number of the person making the complaint; and
 - c. The printed name of the defendant and the docket number involved; and
 - d. The name and address of the bonding company and agent involved; and
 - e. A summary of the circumstances or action being complained of, including when and where the alleged action took place; and
 - f. The signature of the person making the complaint.

2. Upon receipt of any written complaint, the Criminal Court Clerk shall:
 - a. First forward a copy of the complaint to the bonding company requesting a written response within ten (10) days; and

b. After ten (10) days, provide a copy of the complaint and the response, if any, to the Court.

c. The Clerk will then notify all parties in writing of the date and time scheduled for a hearing.

B. Upon a hearing of all parties present, the Court shall make a finding of fact as to whether or not the allegations contained in the complaint violate any rules of the Criminal Court of Hamilton County, and whether or not the allegations support any ethical violations. The Court may in its sole discretion make any finding and orders it deems necessary, including:

1. The referral to the District Attorney's office for any allegations that may rise to the level of a criminal offense; or

2. The suspension or termination of the bonding company's approval to do business; or

3. The refund of any premium paid or a portion thereof; or

4. The setting of any conditions the Court feels necessary.

XIII. Clerk fees

A. There shall be a filing fee, payable in advance, of \$15.00 for the filing of any document except the Semi-Annual Reports. Any document includes but is not limited to the following:

1. Any change in the company's name, address, telephone number;

2. The addition or deletion of any agent;

3. A response to any complaint; or

4. The notification of an arrest of a bonding company agent.

B. There shall be a \$6.00 fee, payable in advance, for the surrender of any defendant, including those done in open court. In the event of multiple charges or cases for one defendant, the fee must be paid for each charge or case for which the surrendering bonding company has liability.

XIV. Miscellaneous

A. It shall be the responsibility of the bonding company that all bonds shall be fully completed. Bail bonds shall:

1. Have the name, address and zip code number of the defendant legibly printed thereon;

2. Be signed by the agent making said bond; and

3. Have the name of the bonding company boldly and legibly stamped or printed thereon.

B. A bonding company, or its agent, must be given a copy of each bail bond at the time the bonding company, or its agent, accepts responsibility for the defendant. The bonding company must retain a copy of each bail bond for which it is liable.

C. Any bonding company authorized by the Hamilton County Criminal Court Judges shall file with the Criminal Court Clerk a semi-annual financial report pursuant to T.C.A. § 40-11-303.

1. Upon the failure of any company to file this report, or any other record or document required by statute or local rules, the Criminal Court Clerk shall notify the Criminal and Sessions Court Judges and shall remove the company from the approved list. In such event, the company shall not be allowed to write any bonds until such time as all requirements are met.

D. All persons having financial or managerial interests in a bonding company must be revealed on the initial petition and on the same semi-annual report.

1. There is no prohibition against one person or entity owning, having any ownership or financial or managerial interest in more than one bonding company if:

- a. Such interest is revealed to the Court, and
- b. Each company is qualified with its own deposited security and the corresponding limits, and
- c. Each company has its own business license and telephone number, and
- d. Each company has its own separate agents who write bonds only for that one company.

2. In the event that complete ownership interest is not revealed to the Court, the Court may in its discretion take whatever action it deems necessary including the temporary or permanent removal of that company.

E. There is no prohibition against a person or entity owning a bonding company from also owning or having an interest in any other business. Such other interest must be revealed to the Court at the time of the original petition and on the semi-annual reports.

1. The Court may, in its discretion, impose any limits or conditions it feels necessary to ensure the professional standing or appearance of the bonding company.

- a. Such measures, if any, shall be in the public interest to avoid a conflict of interest or an appearance of impropriety on the part of the bonding company.

F. An agent may be qualified for, and write bonds for, only one bonding company.

1. An owner of more than one bonding company may be approved by the Court as an agent for each company under his/her ownership, thereby being qualified to write bonds for each company owned.

G. Pursuant to T.C.A. §§ 40-11-125 and 40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension, or termination of approval to do business if it appears to the Court that a bondsman:

1. Has been guilty of violating any of the laws of the State of Tennessee relating to bail bonds; or

2. Has been arrested and convicted for violating any of the laws of any state; or

3. Has a final judgment of forfeiture entered against him/her that remains unsatisfied; or

4. Has failed to comply with any local rules; or

5. Is guilty of unprofessional conduct that includes but is not limited to:

a. Loitering about any jail or court premises for the purpose of soliciting business;

b. Suggesting or advising the employment of, or otherwise making referrals to, any particular attorney to represent the defendant;

c. Paying a fee or giving or promising anything of value to any attorney, to acquire a bond, or receiving a fee or anything of value from any attorney;

d. Paying a fee or giving or promising anything of value to any clerk of court, jailer, police officer, peace officer, committing magistrate or any other person who has power to arrest or hold in custody, or to any public official or public employee to secure a bond and/or a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof;

e. Paying a fee or rebate or giving anything of value to an attorney in bail bond matters, except in the defense of any action on a bond;

f. Participating in the capacity of an attorney at a trial or hearing of one on whose bond he/she is surety;

g. Surrendering a principal or asking any court to be relieved from a bail bond arbitrarily, or without good cause;

h. Accepting anything of value from a principal except the premium; however, the bondsman shall be allowed to accept collateral security or other indemnity from the principal with the provision that such shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond. When a bail bondsman accepts collateral, he/she shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received and the terms of redemption;

i. Making or posting a bail bond for himself/herself, or for another agent of the same bonding company.

H. It shall be the responsibility of any bonding company and/or bonding company owner to immediately notify the Court, in writing, of any misdemeanor and/or felony arrest of any of its agents, including an owner/agent. Failure to do so may result in any disciplinary action against the agent and/or company the Court, in its sole discretion, feels necessary.

XV. Amendments

A. These rules may be amended from time to time by the Criminal Court Judges.

1. Upon amendment, the Criminal Court Clerk shall notify all bonding companies then in existence by certified mail, return receipt requested, or by personal delivery with a signed receipt for same.

2. Upon notice, all bonding companies then in existence shall comply with such.

XVI. Noncompliance

A. Bonding companies may have sixty (60) days to correct any noncompliance with these rules or the laws of the State of Tennessee. After sixty (60) days a company shall be permanently removed from the approved list. Those wishing reinstatement after this time must file a new Petition with the Court and meet all criteria then in effect, as though it were a new company.

XVII. Enforcement

A. In the event that legal action is necessary to enforce any rules or to collect any judgment, the owner of a bonding company shall pay any attorney fees, court costs, and other costs incident thereto.

LOCAL RULES OF PRACTICE FOR HAMILTON COUNTY JUVENILE COURT

Effective January 2, 2020

TABLE OF CONTENTS

RULE.	RULE.
1. Adoption of rules.	13. Discovery.
2. Scope and purpose.	14. Confidential records.
3. Courtroom decorum.	15. Pretrial motions.
4. Legal guardian required.	16. Conduct of trials.
5. Sessions.	17. Orders.
6. Office hours.	18. Dormant cases.
7. Attorneys.	19. Guardian ad litem and CASA.
8. Pleadings.	20. Foster Care Review Board.
9. Electronic and facsimile filing.	21. Mediation and parenting plans.
10. Motions.	22. Waivers or modifications of rules.
11. Scheduling of hearing continuances.	
12. Service of process, subpoenas and other documents.	

Rule 1. Adoption of rules.

On the effective date indicated below, the Juvenile Court of Hamilton County abrogates all existing local rules of practice and adopts these rules. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 2. Scope and purpose.

These rules and the Tennessee Rules of Juvenile Practice and Procedure or in applicable cases the Tennessee Rules of Civil Procedure shall govern the practice and procedure in all cases before the Juvenile Court of Hamilton County, Tennessee, unless specifically excluded or where justice so requires. They are intended to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 3. Courtroom decorum.

No participant shall dress in a manner which detracts from proper decorum in the Court. There shall be no use of tobacco products, vapes, eating, or chewing gum in the courtroom. There shall be no telephones or other electronic devices allowed in the courtroom unless the device is silenced. No recording or photography will be allowed in the courtroom while court is in session, absent specific permission of the Court. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 4. Legal guardian required.

In juvenile delinquency proceedings, a parent or legal guardian must be present at every hearing unless excused by the Court in writing or on the record. Unless otherwise authorized in writing, children released from the detention unit will only be released to a legal guardian. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 5. Sessions.

There shall be a session of court daily, except on non-judicial days, which are Saturdays, Sundays and Hamilton County holidays. Court hours are 8:00 am until 4:30 pm. Exceptions to this schedule may be authorized only by the presiding Judge. Unless the Judge directs otherwise, any case in which the Court has jurisdiction may be heard in the first instance by a Magistrate. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 6. Office hours.

The Office of the Clerk of Court shall be open for the regular transaction of business from 8:00 am until 4:30 pm except on non-judicial days, which are Saturdays, Sundays and Hamilton County holidays. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 7. Attorneys.

All attorneys licensed to practice law in Tennessee shall be allowed to appear in any matter coming before the Court. In accordance with Rule 104 of the Tennessee Rules of Juvenile Practice and Procedure, an attorney of record who wishes to be relieved from his/her duty to represent a client may do so only by permission of the Court. All lawyers are expected to comply with the Chattanooga Bar Association Guidelines for Professional Conduct. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 8. Pleadings.

All pleadings filed or presented to this Court shall be on letter-sized (8½" x 11") paper, opaque and unglazed. An original pleading shall be filed in all causes and shall be accompanied by sufficient copies necessary for service upon the parties. Attorneys shall provide copies of all exhibits for the Court and parties.

Form petitions which meet the requirements of law are provided by the Court for every type of proceeding within the jurisdiction of the Court, and Court personnel are available to appropriately assist as necessary in the preparation of petitions. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 9. Electronic and facsimile filing.

The Juvenile Court Clerk shall accept papers for filing by facsimile transmission as provided in Rule 5A.02 of the Rules of Civil Procedure and Rule 106

of the Tennessee Rules of Juvenile Practice and Procedure. No facsimile filing shall exceed fifty (50) pages in length, including the cover sheet unless authorized by the Court.

The Juvenile Court Clerk shall accept documents for filing by electronic means that comply with technological standards promulgated by the Tennessee Supreme Court. Please consult the Juvenile Court Clerk for case types and document types that can be filed electronically, as well as for instructions fore-filing and the requisite fees. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 10. Motions.

Generally. Motions shall be in writing and cite the rule, statute, or other authority for the relief sought and will be set for hearing on the Docket designated by the Judicial Officers to whom the case has been newly assigned or has previously been assigned to in a related matter. Legal arguments may be heard and agreements announced on the motion docket. If testimony is required, the case may be re-docketed. Briefs and responses may be required at the discretion of the Court.

Schedule and call. Motions will be heard every Wednesday at 8:30 am with the exception of Motions filed in the Child Support Division which will be heard every Tuesday at 8:30 am. Motions may be heard at other times with the consent of the Judge. Motions will be called at the Court's first regularly scheduled motion day occurring no less than five (5) business days after the filing of the motion. Notice of the date and time of the hearing shall be placed on the motion. Motions filed by 4:00 pm on Tuesday will be called the second following Wednesday (Tuesday for Child Support Division). [Adopted December 30, 2019, effective January 2, 2020.]

Rule 11. Scheduling of hearing continuances.

All motions for continuance shall be made as soon as practicable before the trial date and must be approved by the Court. Agreed upon continuances shall be by Order signed by counsel for all parties and or by all the parties if not represented by counsel and shall specify a new trial date. It is the requesting party's responsibility to notify all parties and witnesses subpoenaed of the continuance and the reset court date. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 12. Service of process, subpoenas and other documents.

All subpoenas shall be typed or printed on forms provided by the Court and submitted to the Clerk of the Court pursuant to Rules 102 and 107 of the Tennessee Rules of Juvenile Practice and Procedure.

If service of process is effectuated by personal service for an initial setting and the party has presented him/herself to the Court, subsequent notice may be made by mail or in open court. All parties shall appear at all proceedings unless excused by the Court. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 13. Discovery.

Discovery may be allowed under such terms as set forth in the Tennessee Rules of Juvenile Practice and Procedure 206 and 305. Prior to filing a Motion related to Discovery, the interested party shall exhaust all efforts to come to an agreement for discovery and shall have so certified to the Court in the Motion. The District Attorney General's office shall provide or facilitate discovery in delinquency cases. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 14. Confidential records.

All records submitted or filed with the Hamilton County Juvenile Court shall be confidential records (which includes, but is not limited to, medical records or evaluations, mental health records or evaluations, substance abuse assessment/ treatment records, drug screen results, reports from the Tennessee Department of Children Services or other agencies, CASA reports and probation reports) and shall not be disclosed or released to anyone for any purpose other than the proceedings currently before this Court, without further authorization from the Presiding Judge. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 15. Pretrial motions.

All pretrial Motions shall be in writing and must be filed with the Court and served by 4:00 pm at least five (5) days before the hearing in the matter. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 16. Conduct of trials.

Proceedings in the Court shall be closed hearings except in those cases where the public is allowed by statute. In juvenile delinquency proceedings a parent or guardian must be present at every adjudicatory hearing. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 17. Orders.

Unless specifically directed to do so by the Court, attorneys are not required to prepare and submit orders. Orders are otherwise prepared by the Clerk and are reviewed and finalized by the Judge or Magistrate. Any party wishing to prepare and submit an order for approval may simply inform the Court of that intention. Such orders shall be submitted to opposing counsel and be lodged no later than the 10th day following the decision.

The order shall be signed by all parties or their counsel or certified pursuant to Tennessee Rules of Civil Procedure 58 where applicable or Tennessee Rules of Juvenile Practice and Procedure 117 in all other matters. Any proposed order lodged with the Clerk shall bear the word "PROPOSED" at the top of the order. Ten (10) business days after the initial proposed order is lodged, the Clerk shall deliver the proposed order and any objection to the Magistrate or Judge. Business days shall be computed in accordance with Rule 6.01 of the Tennessee Rules of Civil Procedure. Once entered, the Clerk will provide the

Order to all parties or their counsel. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 18. Dormant cases.

In order to expedite cases, the Court may take reasonable measures to dismiss cases that have not been disposed of or scheduled for hearing within twelve (12) months of the date of filing, last summons issued or service, whichever is later, unless the petitioner files for relief from this Rule prior to the dismissal. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 19. Guardian ad litem and CASA.

The Court will appoint a qualified attorney Guardian ad Litem in all Termination of Parental Rights cases and in other cases where appropriate. The Court may appoint a Guardian ad Litem at the request of any party when the Court deems such an appointment to be appropriate in other cases.

The court may also appoint CASA to act on behalf of a child in determining the best interest of the child. CASA shall be given notice of all hearings, staffing meetings, adjudications, dispositions and any other notices given to the parties with regards to the case in which they were appointed. CASA shall be entitled to be present at any court proceedings. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 20. Foster Care Review Board.

Hamilton County Foster Care Review Board (FCRB) Program will abide by Rule 403 of the Tennessee Rules of Juvenile Practice and Procedure in addition to the local rules set forth herein.

Scheduling and notice. The Department of Children’s Services (DCS) is required to provide proof of notice to all parties, their attorneys , GAL and foster parents, as early as possible but no less than fifteen (15) calendar days prior to a scheduled board review. Board Reviews are held on every first and second Tuesday of the month.

Should there be an error in timely notice, the DCS liaison shall notify the Foster Care Review Coordinator, who may have the case reset for the following month. If a party is not present due to lack of timely notice, the case shall be reset and the DCS Deputy Regional Administrator will be notified.

If it is determined at the board meeting that required documents are missing or outdated, the review will be reset and the DCS Deputy Regional Administrator will be notified of the rescheduled review.

A copy of each notification letter must be included in the case documentation packet submitted to the Court. Each notification letter must identify the intended party, their association to the case, method of contacting the party with address, email address and/or telephone number and the date notice was given. All required documentation shall be provided to the FCRB Coordinator. The FCRB Coordinator shall evaluate documented notices to ensure parties were properly notified.

The FCRB Coordinator is responsible for determining that a quorum of members, with a minimum of three (3), exists prior to each review. The board may request a child be present for its next review. If this request is made, DCS is responsible to facilitate transportation for the child to attend. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 21. Mediation and parenting plans.

Parties shall be made aware that Mediation services are available and may be ordered at the discretion of the Court in contested cases. The Court may also order that a Parenting Plan be submitted and incorporated by reference into any Final Order.

Upon motion of any party or *sua sponte*, the Court may order any eligible matter within the jurisdiction of this Court to be referred to mediation prior to trial on the merits. If the parties cannot agree on a Rule 31 Mediator, the Court may enter an order designating a Mediator. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 22. Waivers or modifications of rules.

Any of the rules herein enacted may be waived or modified by special order of the Court when in the Court's opinion such a waiver or modification is necessary in order to do justice or to arrive at the equities of the case between or among the parties involved. [Adopted December 30, 2019, effective January 2, 2020.]

ADDITIONAL LOCAL RULES OF PRACTICE FOR HAMILTON COUNTY JUVENILE COURT, CHILD SUPPORT DIVISION

Effective January 2, 2020

Rule 1. Adoption of rules.

These local rules are adopted by the Hamilton County Juvenile Court for practice before the Court's Child Support Division. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 2. Court sessions.

There shall be a session of Court daily, except on non-judicial days, which are Saturdays, Sundays and Hamilton County holidays. Court hours are 8:00 am until 4:30 pm. Exceptions to this schedule may be authorized only by the presiding Judge. Unless the Judge directs otherwise, any case in which the Court has jurisdiction will be heard in the first instance by a Magistrate. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 3. Continuances.

Cases will be continued only upon Magistrate approval. A hearing shall be required for all contested continuance requests. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 4. Magistrate's jurisdiction.

Magistrates in Division IV-D Child Support determine child support issues, including but not limited to the establishment of parentage, support, modification, enforcement and termination of support. Magistrates may consider agreed upon parenting plans. Magistrates may not address contested custody or visitation issues which must be addressed after the filing of a Petition with the Clerk of Court of the Hamilton County Juvenile Court, Main Division located at 1600 E. 3rd St., Chattanooga, TN . [Adopted December 30, 2019, effective January 2, 2020.]

Rule 5. Appeals.

A request for rehearing of the Division IV Magistrate's decision must be filed with the Clerk of Court within ten (10) days of entry of the order. Upon filing, hearing is set before the Juvenile Court Judge. The Magistrate's order is effective and binding upon the parties until the rehearing is addressed by the Judge. Decisions of the Judge may be appealed to the Tennessee Court of Appeals and shall be governed by the Tennessee Rules of Appellate Procedure. [Adopted December 30, 2019, effective January 2, 2020.]

Rule 6. Waivers or modification of rules.

Any of the rules herein enacted may be waived or modified by special order of the Court when in the Court's opinion such a waiver or modification is necessary in order to do justice or to arrive at the equities of the case between or among the parties involved. [Adopted December 30, 2019, effective January 2, 2020.]

Index to Local Rules of Hamilton County

A

ABROGATION OF FORMER RULES,

Hamilton GenSess Civ&Crim 1.

Juvenile court, Hamilton Juv 1.

ADMINISTRATIVE DECISIONS.

Chancery court review, Hamilton
Chancery and Circuit 15.01 to Hamilton
Chancery and Circuit 15.04.

ADOPTIONS.

Final court report, Hamilton Chancery and
Circuit 13.06.

Final hearings, Hamilton Chancery and
Circuit 13.04.

Minors, Hamilton Chancery and Circuit
13.04.

Petitions for adoption, Hamilton Chancery
and Circuit 13.02.

Surrenders, Hamilton Chancery and Circuit
13.01.

Termination of parental rights.

Timing of actions, Hamilton Chancery and
Circuit 13.05.

Waiver of procedure requirements,
Hamilton Chancery and Circuit 13.03.

ADVERTISING.

Real property sales, Hamilton Chancery
and Circuit 18.03.

ALIMONY.

Pendente lite hearings, Hamilton Chancery
and Circuit 10.02.

APPEALS.

Child support.

Juvenile court child support division,
Hamilton Juv (Child Support) 5.

APPEARANCES.

Criminal cases.

Defense counsel, appearance and
withdrawal, Hamilton Crim 9.

Juvenile court.

Appearance before court, Hamilton Juv 7.
Withdrawal from appearance, Hamilton Juv
7.

Late appearance or failure to appear.

Divorces.

Default divorce setting, Hamilton
Chancery and Circuit 10.03.

Motions, effect on, Hamilton Chancery and
Circuit 6.07.

ASSIGNMENT OF CASES, Hamilton
Chancery and Circuit 7.01.

General sessions court, Hamilton GenSess
Civ&Crim 3.

ATTACHMENT.

Extraordinary relief, complaints for,
Hamilton Chancery and Circuit 3.05.

ATTIRE.

Courtroom decorum, Hamilton Chancery
and Circuit 9.01.

Juvenile court, Hamilton Juv 3.

ATTORNEYS AT LAW.

Courtroom decorum, Hamilton Chancery
and Circuit 9.04, Hamilton GenSess
Civ&Crim 4.

General provisions, Hamilton Chancery and
Circuit 9.01 to Hamilton Chancery and
Circuit 9.06.

See COURTROOM DECORUM.

Criminal cases.

Appearance and withdrawal of defense
counsel, Hamilton Crim 9.

Domestic relations.

Attorney fees, Hamilton Chancery and
Circuit 10.05.

Juvenile court.

Appearance before court, Hamilton Juv 7.
Withdrawal from appearance, Hamilton Juv
7.

Masters.

Reference to master.

Duty of counsel, Hamilton Chancery and
Circuit 12.01.

Probate matters.

Fees.

Court approval, Hamilton Chancery and
Circuit 17.11.

Professional conduct.

Applicable provisions, Hamilton GenSess
Civ&Crim 2.

Qualifications, Hamilton GenSess Civ&Crim
5.

Withdrawal of counsel.

Case management, Hamilton Chancery and
Circuit 7.06.

ATTORNEYS' FEES.

Action for fees in default cases.

Requirements, Hamilton GenSess
Civ&Crim 5.

AURAL RECORDINGS AS EVIDENCE.

Criminal cases.

Deadlines for pretrial matters, Hamilton
Crim 6.

AUTHORITY FOR RULES, Hamilton
GenSess Civ&Crim 1.

B

- BAIL**, Hamilton Crim 12.
- Bonding companies**, Hamilton Crim Appx I.
- Bonds**, Hamilton GenSess Civ&Crim 18.
- BENCH CONFERENCES.**
- Courtroom decorum**, Hamilton Chancery and Circuit 9.03.
- BONDS, SURETY.**
- Bail bonds.**
 - Bonding companies, Hamilton Crim Appx I.
- Cost bond**, Hamilton Chancery and Circuit 3.01.
- BRIEFS.**
- Administrative decision review**, Hamilton Chancery and Circuit 15.01.
 - Filing of brief, Hamilton Chancery and Circuit 15.02.
 - Service of briefs, Hamilton Chancery and Circuit 15.02.
- Motions**, Hamilton Chancery and Circuit 6.05.

C

- CASA.**
- Juvenile court**, Hamilton Juv 19.
- CASE MANAGEMENT.**
- Assignment of cases**, Hamilton Chancery and Circuit 7.01.
- Conferences**, Hamilton Chancery and Circuit 7.02.
- Continuances**, Hamilton Chancery and Circuit 7.03.
- Criminal cases.**
 - Allocation of cases as indictments and presentments are made, Hamilton Crim 3.
 - Scheduling of proceedings, Hamilton Crim 4.
 - Trials.
 - Time to commence, Hamilton Crim 5.
- Dismissal of cases.**
 - Dormant cases, Hamilton Chancery and Circuit 7.05.
- Dormant cases.**
 - Dismissal, Hamilton Chancery and Circuit 7.05.
- Reassignment of cases**, Hamilton Chancery and Circuit 7.01.
- Setting cases.**
 - Divorces.
 - Default divorce setting, Hamilton Chancery and Circuit 10.03.
- Trial docket**, Hamilton Chancery and Circuit 7.04.
- Uncontested cases**, Hamilton Chancery and Circuit 7.02.
- Withdrawal of attorney**, Hamilton Chancery and Circuit 7.06.

CERTIORARI.

- Extraordinary relief, complaints for**, Hamilton Chancery and Circuit 3.05.

CHAMBERS.

- Security of chambers and adjacent areas**, Hamilton GenSess Civ&Crim 7.

CHANCERY COURT MATTERS.

Administrative review.

- Briefs, Hamilton Chancery and Circuit 15.01.
- Filing, Hamilton Chancery and Circuit 15.02.
- Service, Hamilton Chancery and Circuit 15.02.
- Oral argument, Hamilton Chancery and Circuit 15.03.
- Waiver, Hamilton Chancery and Circuit 15.04.

- Applicability of civil rules**, Hamilton Chancery and Circuit 1.02.

Guardianship and conservatorship,

- Hamilton Chancery and Circuit 16.01 to Hamilton Chancery and Circuit 16.07.

Motions.

- Call of motions, Hamilton Chancery and Circuit 7.04.

Probate, Hamilton Chancery and Circuit

- 17.01 to Hamilton Chancery and Circuit 17.11.

Real property sales, Hamilton Chancery

- and Circuit 18.01 to Hamilton Chancery and Circuit 18.04.

CHILD SUPPORT.

Juvenile court child support division,

- Hamilton Juv (Child Support) 1 to (Child Support) 6.

- Adoption of rules, Hamilton Juv (Child Support) 1.

- Appeals, Hamilton Juv (Child Support) 5.

- Continuances, Hamilton Juv (Child Support) 3.

- Magistrate's jurisdiction, Hamilton Juv (Child Support) 4.

- Sessions, Hamilton Juv (Child Support) 2.

- Waiver or modification of rules, Hamilton Juv (Child Support) 6.

Pendente lite hearings, Hamilton Chancery

- and Circuit 10.02.

CIRCUIT COURT MATTERS.

Applicability of civil rules, Hamilton

- Chancery and Circuit 1.02.

CITATION OF RULES.

Local rules of civil practice, Hamilton

- Chancery and Circuit 1.04.

CIVIL CASES COVER SHEET, Hamilton

- Chancery and Circuit 3.02.

CIVIL WARRANTS.

Service of process.

- General sessions court, Hamilton GenSess Civ&Crim 16.

CLERKS OF COURT.**Criminal cases.**

Records.

Custody and control, Hamilton Crim 8.

Definition of clerk, Hamilton Chancery and Circuit 2.01.**Ex parte approvals**, Hamilton Chancery and Circuit 3.06.**Files.**

Custody and control over court records and files, Hamilton Chancery and Circuit 4.03.

Gifts and gratuities.

Offering gifts to or acceptance of gifts by clerk, Hamilton Chancery and Circuit 14.02.

Juvenile court.

Office hours, Hamilton Juv 6.

Pleadings and papers, submission,

Hamilton Chancery and Circuit 4.02.

COMMON FORM PROBATE, Hamilton Chancery and Circuit 17.04.**CONFERENCES.****Bench conferences.**

Courtroom decorum, Hamilton Chancery and Circuit 9.03.

Case management, Hamilton Chancery and Circuit 7.02.**CONFIDENTIALITY.****Juvenile court.**

Confidential records, Hamilton Juv 14.

CONFLICTS OF INTEREST.**Clerks of court, court officers and sheriffs.**

Gifts and gratuities.

Offering gifts to or acceptance of gifts by, Hamilton Chancery and Circuit 14.01, Hamilton Chancery and Circuit 14.02.

CONSERVATORS.**Guardianship and conservatorship,**

Hamilton Chancery and Circuit 16.01 to Hamilton Chancery and Circuit 16.07.

CONTINUANCES, Hamilton Chancery and Circuit 7.03.**Civil case continuances**, Hamilton GenSess Civ&Crim 9.**Criminal case continuances**, Hamilton Crim 4, Hamilton GenSess Civ&Crim 13.**Juvenile court**, Hamilton Juv 11.

Child support division, Hamilton Juv (Child Support) 3.

Masters, Hamilton Chancery and Circuit 12.03.**COSTS.****Bonds.**

Cost bond, Hamilton Chancery and Circuit 3.01.

Taxing, Hamilton Chancery and Circuit 5.04.

Retaxing, Hamilton Chancery and Circuit 5.05.

COURT APPOINTED SPECIAL ADVOCATES (CASA).**Juvenile court**, Hamilton Juv 19.**COURT FILES**, Hamilton Chancery and Circuit 4.03.**COURT REPORTERS.****Masters**, Hamilton Chancery and Circuit 12.05.**Record of proceedings**, Hamilton Chancery and Circuit 8.03.**COURTROOM DECORUM**, Hamilton

Chancery and Circuit 9.01 to Hamilton

Chancery and Circuit 9.06, Hamilton

GenSess Civ&Crim 4.

Addressing the court, Hamilton GenSess Civ&Crim 4.**Attire**, Hamilton GenSess Civ&Crim 4.**Cell phones and other electronic devices**, Hamilton GenSess Civ&Crim 4.**Criminal cases**, Hamilton Crim 10.**Juvenile court**, Hamilton Juv 3.**Seating**, Hamilton GenSess Civ&Crim 4.**Standards of conduct**, Hamilton GenSess Civ&Crim 4.**Standing at opening**, Hamilton GenSess Civ&Crim 4.**COURTROOM SECURITY.****Chambers.**

Security of chambers and adjacent areas, Hamilton GenSess Civ&Crim 7.

Entering while passing through security, Hamilton GenSess Civ&Crim 6.**Officers**, Hamilton GenSess Civ&Crim 6.**CRIMINAL RULES**, Hamilton Crim 1 to Hamilton Crim 12.**Adoption of rules**, Hamilton Crim 1.**Attorneys.**

Appearance and withdrawal of defense counsel, Hamilton Crim 9.

Aural or visual recordings as evidence.

Deadlines for pretrial matters, Hamilton Crim 6.

Bail, Hamilton Crim 12.

Bonding companies, Hamilton Crim Appx I.

Case management.

Allocation of cases as indictments and presentments are made, Hamilton Crim 3.

Scheduling of proceedings, Hamilton Crim 4.

Citation of rules, Hamilton Crim 1.**Conduct in courtroom**, Hamilton Crim 10.**Continuances**, Hamilton Crim 4.**Discovery.**

Deadlines for pretrial matters, Hamilton Crim 6.

Grand jury, Hamilton Crim 2.**Insanity defense.**

Deadlines for pretrial matters, Hamilton Crim 6.

Jury instructions.

Deadlines for pretrial matters, Hamilton Crim 6.

CRIMINAL RULES —Cont'd

- Media access to courtroom**, Hamilton Crim 11.
- Orders.**
 - Preparation and dissemination, Hamilton Crim 7.
- Pretrial hearings and proceedings.**
 - Deadlines for pretrial matters, Hamilton Crim 6.
- Purposes of rules**, Hamilton Crim 1.
- Records.**
 - Custody and control, Hamilton Crim 8.
- Subpoenas.**
 - Deadlines for pretrial matters, Hamilton Crim 6.
- Suspending rules of practice**, Hamilton Crim 1.
- Trials.**
 - Time to commence, Hamilton Crim 5.

D

DECEDENTS' ESTATES.

- Probate matters generally**, Hamilton Chancery and Circuit 17.01 to Hamilton Chancery and Circuit 17.11.

DECORUM.

- See COURTROOM DECORUM.

DELINQUENCY PROCEEDINGS.

- Legal guardian.**
 - Presence at proceedings of parent or legal guardian, Hamilton Juv 4.

DISCOVERY.

- Criminal cases.**
 - Deadlines for pretrial matters, Hamilton Crim 6.

- Filing**, Hamilton Chancery and Circuit 4.04.

- Juvenile court**, Hamilton Juv 13.

DISMISSAL OF CASES.

- Dispositive motions**, Hamilton Chancery and Circuit 6.06.
- Dormant cases**, Hamilton Chancery and Circuit 7.05.
 - Juvenile court, Hamilton Juv 18.

- DISPOSITIVE MOTIONS**, Hamilton Chancery and Circuit 6.06.

DIVORCES.

- Agreed divorces.**
 - Signatures, Hamilton Chancery and Circuit 10.04.

Alimony.

- Pendente lite hearings, Hamilton Chancery and Circuit 10.02.

- Default divorce setting**, Hamilton Chancery and Circuit 10.03.

- Financial statements**, Hamilton Chancery and Circuit 10.01.

Mediation.

- Family law mediation, Hamilton Chancery and Circuit 10.06.

DOCKETS.

- General sessions court**, Hamilton GenSess Civ&Crim 3.
 - Civil case dockets, Hamilton GenSess Civ&Crim 8.
 - Compliance docket, Hamilton GenSess Civ&Crim 14.
 - Criminal case dockets, Hamilton GenSess Civ&Crim 12.
 - Compliance docket, Hamilton GenSess Civ&Crim 14.
- Trial docket.**
 - Case management, Hamilton Chancery and Circuit 7.04.

DOMESTIC RELATIONS.

- Agreed divorces.**
 - Signatures, Hamilton Chancery and Circuit 10.04.
- Attorney fees**, Hamilton Chancery and Circuit 10.05.
- Default divorce setting**, Hamilton Chancery and Circuit 10.03.
- Financial statements**, Hamilton Chancery and Circuit 10.01.
- Mediation.**
 - Family law mediation, Hamilton Chancery and Circuit 10.06.
- Pendente lite hearings**, Hamilton Chancery and Circuit 10.02.

DORMANT CASES.

- Dismissal**, Hamilton Chancery and Circuit 7.05.
 - Juvenile court, Hamilton Juv 18.

DRIVERS' LICENSES.

- Restricted drivers' licenses cases**, Hamilton GenSess Civ&Crim 20.

E

EFFECTIVE DATE OF RULES.

- Local rules of civil practice**, Hamilton Chancery and Circuit 1.01.

E-FILING.

- Permissible**, Hamilton Chancery and Circuit 4.05.
- Provisions applicable to E-Filing**, Hamilton Chancery and Circuit 4.05.

ELECTRONIC DEVICES.

- Courtroom decorum.**
 - Juvenile court, Hamilton Juv 3.

ELECTRONIC FILING.

- Juvenile court**, Hamilton Juv 9.

EVIDENCE.

- Masters.**
 - Evidence exchange, Hamilton Chancery and Circuit 12.04.

EXECUTORS AND ADMINISTRATORS.

- Probate matters.**
 - Fees.
 - Court approval, Hamilton Chancery and Circuit 17.11.

EXECUTORS AND ADMINISTRATORS

—Cont'd

Probate matters —Cont'd

Summary removal and sanctions of
personal representatives, Hamilton
Chancery and Circuit 17.10.

EXHIBITS.

Control of exhibits, Hamilton Chancery and
Circuit 8.04.

Disposal, Hamilton Chancery and Circuit
8.04.

Motions.

Exhibits to motions, Hamilton Chancery
and Circuit 6.03.

EX PARTE MATTERS.

Approvals, Hamilton Chancery and Circuit
3.06.

Certificate of service, Hamilton Chancery
and Circuit 4.01.

EXTRAORDINARY RELIEF.

Complaints, Hamilton Chancery and Circuit
3.05.

F**FAX MACHINES.****Juvenile court.**

Fax filing, Hamilton Juv 9.

**Number included on pleadings and
papers**, Hamilton Chancery and Circuit
3.03.

FEES.**Probate matters.**

Court approval, Hamilton Chancery and
Circuit 17.11.

FOREIGN LANGUAGE INTERPRETERS.

Appointments, compensation, costs, etc.,
Hamilton GenSess Civ&Crim 10.

FORFEITURES.**Warrants.**

Forfeiture/property seizure warrants,
Hamilton GenSess Civ&Crim 19.

FORMS.**Equivalent to forms available from clerk.**

Use of forms equivalent in content and
format, Hamilton Chancery and Circuit
2.02.

FOSTER CARE REVIEW BOARD.

Juvenile court, Hamilton Juv 20.

IV-D CHILD SUPPORT CASES.

Appeals, Hamilton Juv (Child Support) 5.

Magistrate's jurisdiction, Hamilton Juv
(Child Support) 4.

FUNDS.

Payment into court, Hamilton Chancery
and Circuit 11.01.

Payments out of court, Hamilton Chancery
and Circuit 11.02.

G

GARNISHMENTS, Hamilton GenSess
Civ&Crim 11.

GIFTS.**Officers of court.**

Offering gifts to or acceptance of gifts by,
Hamilton Chancery and Circuit 14.01.

GRAND JURY.

Sessions, Hamilton Crim 2.

Terms, Hamilton Crim 2.

GUARDIAN AD LITEM.

Chancery court matters, Hamilton
Chancery and Circuit 16.05.

Juvenile court, Hamilton Juv 19.

GUARDIANSHIP AND

CONSERVATORSHIP, Hamilton

Chancery and Circuit 16.01 to Hamilton
Chancery and Circuit 16.07.

Appointment.

Order appointing, Hamilton Chancery and
Circuit 16.06.

Guardian ad litem, Hamilton Chancery and
Circuit 16.05.

Orders.

Appointment, Hamilton Chancery and
Circuit 16.06.

Other matters, Hamilton Chancery and
Circuit 16.07.

Petitions, Hamilton Chancery and Circuit
16.01.

Contents, Hamilton Chancery and Circuit
16.02.

Orders.

Submission with petition, Hamilton
Chancery and Circuit 16.04.

Verification, Hamilton Chancery and Circuit
16.03.

GUM.**Courtroom decorum.**

Juvenile court, Hamilton Juv 3.

H**HEARINGS.****Masters.**

Notice of hearing, Hamilton Chancery and
Circuit 12.02.

I**INSANITY DEFENSE.**

Deadlines for pretrial matters, Hamilton
Crim 6.

INSTRUCTIONS TO JURY.**Criminal cases.**

Deadlines for pretrial matters, Hamilton
Crim 6.

INTERPRETERS.

Language interpreters.

Appointments, compensation, costs, etc,
Hamilton GenSess Civ&Crim 10.

IV-D CHILD SUPPORT CASES.

Appeals, Hamilton Juv (Child Support) 5.

Magistrate's jurisdiction, Hamilton Juv
(Child Support) 4.

J

JUDGES.

Defined, Hamilton Chancery and Circuit
2.01.

JUDGMENT ON THE PLEADINGS.

Dispositive motions, Hamilton Chancery
and Circuit 6.06.

JURY.

Contact with jurors.

Courtroom decorum, Hamilton Chancery
and Circuit 9.06.

Trial by jury.

Demand for jury, Hamilton Chancery and
Circuit 8.01.

JUVENILE COURT, Hamilton Juv 1 to
Hamilton Juv 22.

Abrogation of previous juvenile rules,
Hamilton Juv 1.

Adoption of rules, Hamilton Juv 1.

Child support division, Hamilton Juv (Child
Support) 1.

Applicability of juvenile rules, Hamilton
Juv 2.

Attorneys at law.

Appearance before court, Hamilton Juv 7.
Withdrawal from appearance, Hamilton Juv
7.

CASA, Hamilton Juv 19.

Child support division, Hamilton Juv
(Child Support) 1 to (Child Support) 6.

Clerk of court.

Office hours, Hamilton Juv 6.

Confidential records, Hamilton Juv 14.

Continuances, Hamilton Juv 11.

Child support division, Hamilton Juv (Child
Support) 3.

Decorum, Hamilton Juv 3.

Delinquency proceedings.

Legal guardian.

Presence at proceedings of parent or legal
guardian, Hamilton Juv 4.

Discovery, Hamilton Juv 13.

Dormant cases, Hamilton Juv 18.

Electronic filing, Hamilton Juv 9.

Fax filing, Hamilton Juv 9.

Foster care review board, Hamilton Juv
20.

Guardians ad litem, Hamilton Juv 19.

Legal guardian.

Presence at proceedings of parent or legal
guardian, Hamilton Juv 4.

JUVENILE COURT —Cont'd

Mediation for contested cases, Hamilton
Juv 21.

Motions.

Form and content, Hamilton Juv 10.

Pretrial motions, Hamilton Juv 15.

Schedule and call, Hamilton Juv 10.

Orders.

Preparation, review and signature of
orders, Hamilton Juv 17.

Parenting plans, Hamilton Juv 21.

Pleadings, Hamilton Juv 8.

Scope of juvenile rules, Hamilton Juv 2.

**Service of process, subpoenas and other
documents,** Hamilton Juv 12.

Sessions, Hamilton Juv 5.

Child support division, Hamilton Juv (Child
Support) 2.

Termination of parental rights.

Guardians ad litem, Hamilton Juv 19.

Trial.

Conduct of trials, Hamilton Juv 16.

Waiver or modification of rules, Hamilton
Juv 22.

Child support division, Hamilton Juv (Child
Support) 6.

L

LANGUAGE.

Courtroom decorum, Hamilton Chancery
and Circuit 9.05.

Interpreters.

Language interpreters.

Appointments, compensation, costs, etc,
Hamilton GenSess Civ&Crim 10.

M

MAGISTRATES.

Child support.

Juvenile court child support division.

Jurisdiction of magistrate, Hamilton Juv
(Child Support) 4.

MASTERS.

Continuances, Hamilton Chancery and
Circuit 12.03.

Court reporters, Hamilton Chancery and
Circuit 12.05.

Evidence exchange, Hamilton Chancery
and Circuit 12.04.

Hearings.

Notice, Hamilton Chancery and Circuit
12.02.

Probate matters.

Authority of master, Hamilton Chancery
and Circuit 17.08.

Proof.

Notice to take proof on matter, Hamilton
Chancery and Circuit 12.02.

Reference to master, Hamilton Chancery
and Circuit 12.01.

MASTERS —Cont'd**Report.**

Objections, Hamilton Chancery and Circuit 12.06.

Stipulations, Hamilton Chancery and Circuit 12.05.

MEDIA.**Criminal cases.**

Media access to courtroom, Hamilton Crim 11.

MEDIATION.**Juvenile court.**

Contested cases, mediation for, Hamilton Juv 21.

MINORS.

Adoptions, Hamilton Chancery and Circuit 13.04.

Claims of minors.

Ex parte approvals, Hamilton Chancery and Circuit 3.06.

MODIFICATION OF RULES.

Juvenile court, Hamilton Juv 22.

Child support division, Hamilton Juv (Child Support) 6.

MOTIONS.**Appearance.**

Late appearance or failure to appear, Hamilton Chancery and Circuit 6.07.

Briefs, Hamilton Chancery and Circuit 6.05.

Call of motions, Hamilton Chancery and Circuit 6.02.

Chancery court motions, Hamilton Chancery and Circuit 7.04.

Citation of authority, Hamilton Chancery and Circuit 6.01.

Dispositive motions, Hamilton Chancery and Circuit 6.06.

Exhibits to motions, Hamilton Chancery and Circuit 6.03.

Juvenile court, Hamilton Juv 10.

Pretrial motions, Hamilton Juv 15.

Priority of hearing, Hamilton Chancery and Circuit 6.08.

Responses, Hamilton Chancery and Circuit 6.04.

Schedule for when heard, Hamilton Chancery and Circuit 6.02.

Written motions, Hamilton Chancery and Circuit 6.01.

N**NAME CHANGES.**

Ex parte approvals, Hamilton Chancery and Circuit 3.06.

O**OBJECTIONS.**

Master's report, Hamilton Chancery and Circuit 12.06.

ORAL ARGUMENTS.**Administrative decisions.**

Chancery court review, Hamilton Chancery and Circuit 15.03.

Waiver of oral argument, Hamilton Chancery and Circuit 15.04.

ORDERS.

Approval of orders, Hamilton Chancery and Circuit 5.02.

Criminal cases.

Preparation and dissemination, Hamilton Crim 7.

Guardianship and conservatorship.

Appointment, Hamilton Chancery and Circuit 16.06.

Other matters, Hamilton Chancery and Circuit 16.07.

Juvenile court.

Preparation, review and signature of orders, Hamilton Juv 17.

Preparation.

Local rules of civil practice, Hamilton Chancery and Circuit 5.01.

Proposed orders, Hamilton Chancery and Circuit 5.03.

Real property sales.

Authorizing sale, Hamilton Chancery and Circuit 18.02.

Confirming sale, Hamilton Chancery and Circuit 18.04.

P**PAPERS.**

Clerk, submission to, Hamilton Chancery and Circuit 4.02.

Facsimile number includes, Hamilton Chancery and Circuit 3.03.

Local rules of civil practice.

Pleadings and other papers generally, Hamilton Chancery and Circuit 3.01 to Hamilton Chancery and Circuit 3.06.

Service.

Certificate of service, Hamilton Chancery and Circuit 4.01.

Signatures.

Original signatures, Hamilton Chancery and Circuit 3.04.

PARENTING PLANS.

Juvenile court, Hamilton Juv 21.

PARTIES.**Litigant conduct.**

Courtroom decorum, Hamilton Chancery and Circuit 9.04.

Probate matters.

Interested parties, Hamilton Chancery and Circuit 17.02.

PAYMENTS INTO COURT, Hamilton Chancery and Circuit 11.01.

PAYMENTS OUT OF COURT, Hamilton Chancery and Circuit 11.02.

PENDENTE LITE HEARINGS, Hamilton Chancery and Circuit 10.02.

PERSONAL REPRESENTATIVES.

Probate matters.

Fees.

Court approval, Hamilton Chancery and Circuit 17.11.

Summary removal and sanctions of personal representatives, Hamilton Chancery and Circuit 17.10.

PETITIONS.

Adoptions.

Petitions for adoption, Hamilton Chancery and Circuit 13.02.

Guardianship and conservatorship,

Hamilton Chancery and Circuit 16.01.

Contents of petitions, Hamilton Chancery and Circuit 16.02.

Orders.

Submission with petition, Hamilton Chancery and Circuit 16.04.

Verification of petitions, Hamilton Chancery and Circuit 16.03.

Probate matters, Hamilton Chancery and Circuit 17.03.

PLEA AGREEMENTS, Hamilton GenSess Civ&Crim 17.

PLEADINGS.

Clerk, submission to, Hamilton Chancery and Circuit 4.02.

Extraordinary relief.

Complaints, Hamilton Chancery and Circuit 3.05.

Facsimile number includes, Hamilton Chancery and Circuit 3.03.

Judgment on the pleadings.

Dispositive motions, Hamilton Chancery and Circuit 6.06.

Juvenile court, Hamilton Juv 8.

Local rules of civil practice, Hamilton Chancery and Circuit 3.01 to Hamilton Chancery and Circuit 3.06.

Service.

Certificate of service, Hamilton Chancery and Circuit 4.01.

Signatures.

Original signatures, Hamilton Chancery and Circuit 3.04.

PRETRIAL MOTIONS.

Juvenile court, Hamilton Juv 15.

PRETRIAL SCHEDULE, Hamilton Chancery and Circuit 8.02.

PROBATE MATTERS, Hamilton Chancery and Circuit 17.01 to Hamilton Chancery and Circuit 17.11.

Accountings, Hamilton Chancery and Circuit 17.09.

Claims, Hamilton Chancery and Circuit 17.07.

Common form probate, Hamilton Chancery and Circuit 17.04.

PROBATE MATTERS —Cont'd

Fees.

Court approval, Hamilton Chancery and Circuit 17.11.

Hours, Hamilton Chancery and Circuit 17.01.

Interested parties, Hamilton Chancery and Circuit 17.02.

Inventories, Hamilton Chancery and Circuit 17.09.

Masters.

Authority, Hamilton Chancery and Circuit 17.08.

Personal representatives.

Summary removal and sanctions, Hamilton Chancery and Circuit 17.10.

Petitions, Hamilton Chancery and Circuit 17.03.

Small estates, Hamilton Chancery and Circuit 17.06.

Solemn form probate, Hamilton Chancery and Circuit 17.05.

PROFESSIONAL CONDUCT.

Applicable provisions, Hamilton GenSess Civ&Crim 2.

PRO SE REPRESENTATION, Hamilton GenSess Civ&Crim 5.

R

RADIO.

Criminal cases.

Media access to courtroom, Hamilton Crim 11.

REAL PROPERTY SALES, Hamilton

Chancery and Circuit 18.01 to Hamilton Chancery and Circuit 18.04.

Advertising, Hamilton Chancery and Circuit 18.03.

Authorizing sale.

Orders authorizing, Hamilton Chancery and Circuit 18.02.

Confirmation of sale.

Order confirming, Hamilton Chancery and Circuit 18.04.

Description of property, Hamilton Chancery and Circuit 18.01.

Orders.

Authorizing sale, Hamilton Chancery and Circuit 18.02.

Confirming sale, Hamilton Chancery and Circuit 18.04.

REASSIGNMENT OF CASES, Hamilton Chancery and Circuit 7.01.

RECORDS.

Juvenile court.

Confidential records, Hamilton Juv 14.

REFERENCE TO MASTER, Hamilton Chancery and Circuit 12.01.

RESTRAINING ORDERS.

Extraordinary relief, complaints for, Hamilton Chancery and Circuit 3.05.

S

SECURITY OF COURTROOM.

Chambers.

Security of chambers and adjacent areas,
Hamilton GenSess Civ&Crim 7.

Entering while passing through security,

Hamilton GenSess Civ&Crim 6.

Officers, Hamilton GenSess Civ&Crim 6.

SEIZURE OF PROPERTY.

Warrants.

Forfeiture/property seizure warrants,
Hamilton GenSess Civ&Crim 19.

SERVICE OF PROCESS.

Administrative review, chancery court.

Briefs, Hamilton Chancery and Circuit
15.02.

Certificate of service, Hamilton Chancery
and Circuit 4.01.

General sessions court, Hamilton GenSess
Civ&Crim 16.

Juvenile court, Hamilton Juv 12.

Return of service, Hamilton GenSess
Civ&Crim 16.

SESSIONS OF COURT.

Juvenile court, Hamilton Juv 5.

Child support division, Hamilton Juv (Child
Support) 2.

SETTING CASES.

Divorces.

Default divorce setting, Hamilton Chancery
and Circuit 10.03.

SETTLEMENTS.

Notice, Hamilton Chancery and Circuit 8.05.

Plea agreements, Hamilton GenSess
Civ&Crim 17.

SIGNATURES.

Divorces.

Agreed divorces, Hamilton Chancery and
Circuit 10.04.

Original signatures, Hamilton Chancery
and Circuit 3.04.

SMALL ESTATES, Hamilton Chancery and
Circuit 17.06.

SOLEMN FORM PROBATE, Hamilton
Chancery and Circuit 17.05.

SPECTATORS.

Courtroom decorum, Hamilton Chancery
and Circuit 9.04.

STIPULATIONS.

Masters, Hamilton Chancery and Circuit
12.05.

SUBPOENAS.

Criminal cases.

Deadlines for pretrial matters, Hamilton
Crim 6.

General sessions court, Hamilton GenSess
Civ&Crim 15.

SUBPOENAS —Cont'd

Juvenile court.

Service of process, subpoenas and other
documents, Hamilton Juv 12.

Service of process.

General sessions court, Hamilton GenSess
Civ&Crim 16.

SUMMARY JUDGMENT.

Dispositive motions, Hamilton Chancery
and Circuit 6.06.

SUMMONS.

Service of process.

General sessions court, Hamilton GenSess
Civ&Crim 16.

SUSPENSION OF RULES.

Local rules of civil practice, Hamilton
Chancery and Circuit 1.03.

T

TELEPHONES.

Courtroom decorum.

Juvenile court, Hamilton Juv 3.

TELEVISION.

Criminal cases.

Media access to courtroom, Hamilton Crim
11.

TERMINATION OF PARENTAL RIGHTS.

Guardians ad litem.

Juvenile court, Hamilton Juv 19.

Timing of actions, Hamilton Chancery and
Circuit 13.05.

TOBACCO.

Courtroom decorum.

Juvenile court, Hamilton Juv 3.

TRIALS.

Bar in courtroom.

Persons authorized within, Hamilton
Chancery and Circuit 9.02.

Case management.

Criminal cases.

Time to commence, Hamilton Crim 5.

Generally, Hamilton Chancery and Circuit
7.01 to Hamilton Chancery and Circuit
7.06.

Continuances, Hamilton Chancery and
Circuit 7.03.

Court reporters.

Record of proceedings, Hamilton Chancery
and Circuit 8.03.

Masters, Hamilton Chancery and Circuit
12.05.

Criminal cases.

Time to commence, Hamilton Crim 5.

Decorum, Hamilton Chancery and Circuit
9.01 to Hamilton Chancery and Circuit
9.06.

Exhibits.

Control of exhibits, Hamilton Chancery and
Circuit 8.04.

TRIALS —Cont'd**Exhibits —Cont'd**

Disposal, Hamilton Chancery and Circuit 8.04.

Jury trial.

Contact with jurors.

Courtroom decorum, Hamilton Chancery and Circuit 9.06.

Demand for jury, Hamilton Chancery and Circuit 8.01.

Juvenile court.

Conduct of trials, Hamilton Juv 16.

Pretrial schedule, Hamilton Chancery and Circuit 8.02.**Record of proceedings,** Hamilton Chancery and Circuit 8.03.

Masters, Hamilton Chancery and Circuit 12.05.

Settlement.

Notice, Hamilton Chancery and Circuit 8.05.

Spectators.

Courtroom decorum, Hamilton Chancery and Circuit 9.04.

U**UNCONTESTED CASES.****Case management,** Hamilton Chancery and Circuit 7.02.**V****VAPING.****Courtroom decorum.**

Juvenile court, Hamilton Juv 3.

VISUAL RECORDINGS AS EVIDENCE.**Criminal cases.**

Deadlines for pretrial matters, Hamilton Crim 6.

W**WAIVER OF RULES.****Juvenile court,** Hamilton Juv 22.

Child support division, Hamilton Juv (Child Support) 6.

WARRANTS.**Civil warrants.**

Service of process.

General sessions court, Hamilton GenSess Civ&Crim 16.

Forfeiture/property seizure warrants,

Hamilton GenSess Civ&Crim 19.

WITHDRAWAL OF COUNSEL.**Criminal cases.**

Defense counsel, appearance and withdrawal, Hamilton Crim 9.

WORKERS' COMPENSATION.**Ex parte approvals,** Hamilton Chancery and Circuit 3.06.

KNOX COUNTY

CHANCERY COURT
 CIRCUIT COURT, DIVISIONS I, II, AND III
 CIRCUIT COURT, DIVISION IV
 CRIMINAL COURT
 UNIFORM LOCAL RULES OF PRACTICE
 COURTS OF RECORD, SIXTH JUDICIAL DISTRICT
 GENERAL SESSIONS COURT
 JUVENILE COURT
 JUVENILE COURT, CHILD SUPPORT DIVISION

LOCAL RULES OF PRACTICE KNOX COUNTY CHANCERY COURT

ADOPTED AND EFFECTIVE MAY 1, 2009

RULE.

1. Adoption of rules.
2. Court sessions.
3. Court records.
4. Complaints and petitions; Process; and summons.
5. Subpoenas.
6. Setting cases, motions and pre-trial hearings.
7. Continuances.
8. Limitations on filing discovery material, interrogatories, requests to admit and requests for documents.
9. Motions to compel discovery.
10. Court costs.
11. Entry of judgment and orders.

RULE.

12. Notice of entry of judgment; Mailing.
13. Domestic relations cases.
14. Settlement of cases involving workers' compensation claims and disabled persons.
15. Application for fees.
16. Guardian ad litem appointments.
17. Probate division filings.
18. Probate hearings.
19. Clerk and master reports.
20. Judicial sales and title opinions.
21. Judicial sales: "According to law."
22. Corporate purchases at judicial sales.
23. Legal advice by court personnel.
24. Case management.

Compiler's Notes. These rules, effective August 1, 2016, supersede the previously adopted Local Rules of Practice for the Chancery Court

of Knox County, Tennessee, effective May 1, 2009.

RULE 1. Adoption of rules.

These local rules are adopted in conformity with Supreme Court Rule 18 for the Knox County Chancery Court effective August 1, 2016, replacing all previous rules and policies governing Chancery Court. These rules are in addition to and not a substitute for the Uniform Local Rules of Practice for the Sixth Judicial District and to the extent these rules are inconsistent with the Uniform Rules, then the Uniform Rules prevail. Any of these rules may be waived or modified by the Court when the Court finds that justice requires the waiver or modification.

Rule 2. Court sessions.

Subject to such variations as the Court may find necessary or convenient, the hours of Court shall be 9:30 A.M. to 4:30 P.M., subject to noon recess from 12:00 noon to 1:30 P.M., and with *ex parte* matters to be heard in chambers from 9:00 A.M. to 9:30 A.M.

Rule 3. Court records.

All Court papers and records shall be kept by the Clerk and Master, and no file may be withdrawn except by Court order.

Rule 4. Complaints and petitions; Process; and summons.

Every complaint and petition shall respectively state the following, if known, for each party: residential address, place and address of employment. Every complaint and petition shall also state the address of the place where each defendant or respondent may be served with process. Upon the filing of a complaint or petition for which a summons is required, the party or the party's counsel filing the complaint or petition may prepare and submit the summons for issuance by the Clerk and Master. Counsel and unrepresented parties are responsible for keeping the Clerk and Master's office advised of correct mailing and other identifying information at all times. It is not the responsibility of the Court or the Clerk's office to investigate the whereabouts of a party or attorney.

Rule 5. Subpoenas.

All requests for subpoenas for trials or hearings shall be in writing and delivered to the Clerk and Master, or by filing a completed subpoena form lacking only the signature of the Clerk and Master, and shall state specifically the witness's full name, as well as where and when the witness may be served with the subpoena. The absence of a witness for a trial or hearing shall not be a ground for continuance unless a witness subpoena request complying with the above was accomplished by the party seeking the continuance no later than 7 days prior to the trial or hearing and the failure to obtain private service of a subpoena upon the witness is satisfactorily explained by the party seeking the continuance.

Rule 6. Setting cases, motions and pre-trial hearings.

(A) The clerk of Court or Judicial Secretary will set all cases at issue for trial and all motions and other matters for hearing, and give notice thereof, except that child support pendente lite hearing dates in domestic relations cases to be heard by the Referee will be assigned at the Clerk's counter. Persons desiring special settings and hearings should contact the office of the Court.

(B) The Court with or without oral argument may decide pre-trial motions. If any counsel or *pro se* party is unavailable upon a day on which a motion is set for oral argument, such counsel or *pro se* party shall obtain another date acceptable to the Court and all other counsel, and shall submit an order before the date of the scheduled hearing approved by all counsel and *pro se* parties setting the motion for hearing on such alternate date.

Rule 7. Continuances.

Cases set for trial or hearing may be continued only by order or leave of the Court.

Rule 8. Limitations on filing discovery material, interrogatories, requests to admit and requests for documents.

(A) *Documents not to be filed.* Pursuant to Tenn. R. Civ. Pro. 5.05, the following shall not be filed with the Court except pursuant to special order of the Court or for use in proceedings: depositions upon oral examination; interrogatories; requests for documents; requests for admissions; and answers and responses thereto.

(B) *Number.* No party shall serve upon any other party more than 30 interrogatories or requests to admit or requests for documents, however numbered, lettered or sub-divided, without leave of Court. If a party is served with interrogatories or requests to admit or requests for documents exceeding 30, response to only the first 30 shall be made. Any motion seeking leave to serve more than 30 interrogatories or requests to admit or requests for documents shall set out each additional interrogatory or request to admit or requests for documents, together with the reason establishing good cause for exceeding the limit of 30.

(C) *Responses.* The response to each interrogatory or request to admit or requests for documents shall be preceded by the interrogatory or request to admit.

Rule 9. Motions to compel discovery.

All motions to compel discovery shall be signed and filed with the clerk, shall include a certificate of service to the adverse party or counsel and may be accompanied by a proposed order. The proposed order will be tendered by the clerk to the Chancellor for entry ten (10) days after filing the motion unless the adverse party or counsel requests in writing a hearing prior to the expiration of the ten (10) day period. Any motion to compel discovery not accompanied by a proposed order will be set for hearing by the Chancellor's secretary.

Rule 10. Court costs.

All orders and judgments which tax costs shall contain both the current home address and employment address of those charged with all or any part of the costs of the cause and shall be signed by the tendering party(ies) or their counsel. The tendering party(ies) shall also provide on a format supplied by the Clerk and Master's office a certificate pursuant to this Rule as to the correctness of the identifying information of those charged with or obligated to pay the costs. In any event, the bill of costs may be sent to those responsible for costs in care of the attorney for such responsible person(s). Sureties on bonds may only be released upon compliance with Tenn. Code Ann. § 29-33-101 et seq. and with a provision for a substitute surety.

Rule 11. Entry of judgment and orders.

The prevailing party upon any motion or trial shall prepare an appropriate order or judgment for entry in the case. The judgment or order shall be filed

with the Clerk within 10 business days following the Court's ruling or trial. It shall be approved by all counsel of record and any *pro se* parties, or shall bear a certificate of service on any counsel or *pro se* party who refuses to approve it as required by Tenn. R. Civ. Pro. 58(2).

Any counsel or *pro se* party who refuses to approve an order or judgment shall file an alternate proposed order or judgment with the Clerk within 5 business days following service of the proposed order or judgment filed by the prevailing party. Such alternate proposed order or judgment shall bear a certificate of service as required by Tenn. R. Civ. Pro. 58 (2).

Rule 12. Notice of entry of judgment; Mailing.

Any party or counsel requesting the Clerk to mail or deliver a copy of the entered judgment to all parties or counsel under TRCP 58.03 shall present with the judgment a list of all parties or their counsel entitled to receive notice with their current mailing addresses and payment of an amount as determined by the Clerk and Master to be sufficient to pay for mailing.

Rule 13. Domestic relations cases.

(A) *Application.* The provisions of Rule 13 apply to all actions for divorce, child custody, visitation, child support and alimony. The Domestic Relations Local Rules and Policies of September 1, 1989, and September 2, 1997, are no longer in effect in Chancery Court.

(B) *Information and pleadings.* Each initial pleading or motion shall set forth the information required by Rule 4 of these rules, and as required by Tenn. Code Ann. § 36-4-106. Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201 et seq., all filings in which the custody of a child is at issue shall set forth in the first filing the information required by the Act and in particular by Tenn. Code Ann. § 36-6-224.

(C) *Time period before hearing.* No action for the granting of a divorce shall be heard until it shall have been at issue or subject to default for 30 days.

(D) *Pretrial affidavit and property list.* No later than 5 days prior to trial in actions for divorce, both parties shall file a joint affidavit outlining their income and their expenses together with a joint list of property and debts listing their separate property and marital property; listing their debts; proposing a division of the marital property and marital debts; and if alimony or spousal support is demanded, the type, amount, duration, and the statutory basis for the granting of the demand. Should the parties dispute a classification of property as being separate or marital, they shall separately list the same in their affidavit as disputed. No later than 5 days prior to trial, the parties shall also exchange copies of their U.S. Income Tax Returns for the 2 tax years next preceding the trial date, regardless of whether the returns were filed by the parties with each other jointly. If a party's tax return has not been filed for either or both of the 2 tax years next preceding the trial date, that party, in lieu of the tax return or tax returns not filed, shall give to the other party copies of all of the documents that reflect all of the income for the party for each of the 2 years for which a tax return has not been filed.

(E) *Child support.*

(i) *Referee hearings.* The Referee shall be limited to hearing, and shall hear, all petitions to grant, to modify and to enforce child support and to modify and to enforce alimony provided child support is also at issue. The Referee shall not set any petition for hearing in any matter unless a parent has filed an application in the case for support services pursuant to Title IV-D of the Social Security Act.

(ii) *Child support and alimony financial statements.* Upon the filing of a petition or motion seeking the modification of child support or alimony, each party shall file, no later than 5 days prior to the hearing, an affidavit listing the assets, debts, gross monthly income and monthly living expenses of each party to the extent known to the filing party, as well as any other relevant financial facts that the filing party desires the Court to consider.

(F) *Parenting plans and parent education seminars.*

(i) In all actions seeking the establishment of residential schedules and/or parenting responsibilities, the plaintiff or petitioner shall file with the complaint temporary parenting plans agreed upon by the parties, or, if no agreement has been reached, a proposed temporary parenting plan of the plaintiff or petitioner.

(ii) If no agreement has been reached, the defendant or respondent shall file with the answer, the defendant's or respondent's proposed temporary parenting plan.

(iii) If only one party files a proposed temporary parenting plan in compliance with Rule 13(F)(i) or (ii), that party may petition the Court for an order adopting that plan by default. Upon a finding that the plan is reasonable and is in the best interest of the child (children) in accordance with Tenn. Code Ann. § 36-6-403(2), the plan may be adopted by the Court by default.

(iv) If both parties submit a proposed temporary parenting plan but cannot agree on a temporary parenting plan, then the parties shall engage in dispute resolution subject to the limitations and restrictions set forth in Tenn. Code Ann. § 36-6-409. In the event dispute resolution is not available or the parties are still unable to agree, either party may request a hearing for the Court to establish a temporary parenting plan.

(v) If the parties are unable to agree on a permanent parenting plan, the parties shall participate in alternative dispute resolution and comply with the provisions of Tenn. Code Ann. § 36-6-404(c)(3). If the parties have not engaged in dispute resolution, or if neither party has filed a proposed permanent plan at least 15 days prior to the trial date, then the trial of the case shall be continued unless an agreed permanent parenting plan is submitted on or before the date for trial.

(vi) If the case is continued for failure to comply with Rule 13(F)(v), then the parties shall, within 30 days of the date the trial was continued, submit proposed permanent parenting plans and participate in dispute resolution. Failure to do so may result in the imposition of any of the sanctions set forth in Rule 16 of the Tennessee Rules of Civil Procedure.

(G) *Reconciliation.* In reconciliation situations, if the cause is not simultaneously dismissed, an Order of Reconciliation shall be entered.

Rule 14. Settlement of cases involving workers' compensation claims and disabled persons.

All pleadings must be filed with the Clerk and Master before hearing in all workers' compensation settlements and settlements involving minors and incompetents or disabled persons.

Rule 15. Application for fees.

All applications for attorney's fees and expenses shall be supported by a statement, verified by the attorney under oath, setting forth in detail the basis for the fees sought. The criteria in Tenn. Sup. Ct. R. 8, RPC 1.5, will control the awarding of the attorney's fees.

Rule 16. Guardian ad litem appointments.

In all cases involving the appointment of a guardian ad litem, the party seeking relief shall present the Court with a proposed order providing for the appointment of a guardian ad litem leaving a space blank for the Court to insert the name of the guardian ad litem.

Rule 17. Probate division filings.

All proceedings, claims, and accountings concerning the administration of a decedent's estate, including testamentary administration, intestate administration, and testamentary trustee proceedings, as well as proceedings for the appointment of a guardian for one entitled to funds in the hands of a personal representative of a decedent's estate, shall be filed in the Probate Division of Chancery Court. All other proceedings, including guardianships, conservatorships, and other fiduciary matters, shall be filed in the other division of the Chancery Court, known as "Chancery Court."

All initial petitions to open the administration of a decedent's estate shall comply with Tenn. Code Ann. § 30-1-117 and the initial hearing on such petitions shall be scheduled in accordance with the practices and procedures established by the office of the Probate Division of Chancery Court. All parties or their counsel filing pleadings to open or to close a decedent's estate administration shall comply with the certification requirements of Rule 10.

Rule 18. Probate hearings.

The Clerk and Master shall have all of the authorization afforded to the Clerk and Master under Tenn. Code Ann. § 16-16-201(b) except that applications for fees shall be heard by the Chancellor; however, the Chancellor may, by a special order of reference, appoint the Clerk and Master to conduct hearings upon applications for fees. Counsel or unrepresented parties may have probate matters set for hearing by requesting a setting from the office of the Probate Division of the Chancery Court. Probate matters set for hearing before the Clerk and Master may be continued only by leave of the Court by written order.

Rule 19. Clerk and master reports.

(A) *By order of reference.* All proceedings conducted pursuant to an Order of Reference to the Clerk and Master shall be in accordance with Tenn. R. Civ. P. 53; provided, a transcript of the proceedings and of the evidence shall be

deemed waived unless the order of reference specifically requires a transcript of the proceedings and of the evidence. All matters referred to the Clerk and Master pursuant to Tenn. R. Civ. P. 53 shall be set for hearing before the Chancellor for an independent review. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Tenn. R. Civ. P. 6.04. After such hearing, the Court may adopt, modify, or reject the report in whole or in part, or may receive further evidence or recommit the report to the Clerk and Master with instructions. The requirements of this subsection (A) shall also apply to Special Masters appointed by the Court pursuant to Tenn. R. Civ. P. 53.01.

(B) *By authority of Tenn. Code Ann. § 16-16-201.* In all proceedings conducted by the Clerk and Master as set forth in Tenn. Code Ann. § 16-16-201, the Clerk and Master shall file a report of the proceedings. All reports for which petitions, exceptions or objections are filed shall be set for hearing before the Chancellor. Upon the expiration of the time for the filing of an exception to the report, and provided no motions, petitions, exceptions or objections have been filed, the Clerk and Master shall prepare, sign and tender an order for entry by the Chancellor along with a copy of the unexcepted to report for an independent review by the Chancellor of the report and the proposed order confirming it. Upon review of the report and the proposed Order of Confirmation by the Chancellor, which order shall not require the signatures of the parties or the attorneys of record, the clerk shall mail the Order of Confirmation to the parties or their attorneys of record and all unrepresented parties. The Clerk and Master shall affix his certificate to the order that he has mailed the order as required by this rule.

Rule 20. Judicial sales and title opinions.

Upon the entry of an order, decree or judgment directing the sale of real property, the Clerk and Master shall cause to be filed a title opinion issued by an attorney whose practice includes a substantial amount of real property title examinations. The expense of the title opinion shall be taxed as a cost of the cause to be deducted and paid from the proceeds of the sale unless otherwise specifically ordered.

Rule 21. Judicial sales: “According to law.”

In the event an order, decree, or judgment of sale directs the Clerk and Master to “sell according to law,” such provision shall be deemed to mean, unless otherwise expressly provided by Court order, that the Clerk and Master shall conduct the sale in accordance with the provisions of Tenn. Code Ann. § 35-5-101 et seq. with the sale to occur at the City-County Building, within the corridor of the Main Street entrance, near the Large Assembly Room, 400 Main Street, Knoxville, Tennessee, and with the sale to be for cash. Unless otherwise expressly provided by Court order, the term, “cash,” shall mean 10% down on the day of sale with the balance to be paid in full to the Clerk and Master within 30 days from the sale date. In the event of such a sale for cash within the above meaning, the Clerk and Master may take a note from the purchaser, without interest, payable within thirty (30) days from the date of sale, for the balance to be paid in full to the Clerk and Master within thirty (30)

days from the sale date and may retain a lien on the property sold as further security.

Rule 22. Corporate purchases at judicial sales.

Unless otherwise authorized by the Court, any purchase by a corporation of property on a credit at a judicial sale shall be guaranteed by two individuals who reside within Knox County, Tennessee.

Rule 23. Legal advice by court personnel.

All Court personnel are forbidden from interpreting any rules of procedure or giving any legal advice. Notice is hereby given to all persons that Court personnel assume no responsibility for any misinformation regarding substantive law, procedural rules, local rules or local customs.

Rule 24. Case management.

(A) *Dismissal of dormant cases.* If no action has been taken in a case for a period of at least one (1) year, the Court may dismiss the case. At least thirty (30) days prior to dismissal, the Clerk and Master shall send written notification to attorneys of record and to each unrepresented party of the pending dismissal.

(B) *Notice of entry required.* If the case is dismissed pursuant to this Rule, the Clerk shall mail a copy of the order dismissing the case for lack of prosecution to attorneys of record and to each unrepresented party.

(C) *Current address on file to be used.* For all purposes of sending notice and copies of orders pursuant to this Rule, the Clerk shall use the mailing address for attorneys of record and each unrepresented party then current with the Court, given or provided by Local Rule 4, and shall not be responsible for further investigating the whereabouts of any party or attorney.

RULES OF PRACTICE OF THE CIRCUIT COURT FOR KNOX COUNTY, DIVISIONS I, II, AND III

EFFECTIVE JULY 1, 2000

Rule I.

The Clerk shall assign each new case to a particular Division of the Court under a procedure as approved by the Judges of the three Divisions of the Court. The procedure shall provide for an equal distribution of the cases filed among the three Divisions.

Rule II.

All process that is to be served by the Knox County Sheriff's officers shall include sufficient information and instructions to enable the officer to locate and serve all persons who are to be served with the process.

All requests to subpoena witnesses for a trial must be filed with the Clerk at least ten (10) days prior to the date of trial.

Rule III.

All court files shall remain under the custody and control of the Clerk and shall not be withdrawn from the Clerk's office.

Rule IV.

No attorney or litigant may submit to an opposing party interrogatories containing more than thirty (30) questions, regardless of how they may be numbered or lettered, without leave of the court in advance of service upon the opposing party.

Rule V.

All Motions to compel discovery will be accompanied by a proposed Order which will be entered ten (10) calendar days after filing unless the adverse party requests in writing a hearing prior to the expiration of the ten day period.

Rule VI.

The Court without argument may decide motions. If any counsel or *pro se* party is unavailable upon a day on which a Motion is set for oral argument, such counsel or *pro se* party shall obtain another date acceptable to the Court and all other counsel, and shall submit an order before the date of the scheduled hearing approved by all counsel and *pro se* parties setting the Motion for hearing on such alternate date.

Rule VII.

Appeals from the General Sessions Court or from a Municipal Court will be dismissed and the decision of the lower Court reinstated if the appealing party fails to appear on the date the appeal is set for trial.

Rule VIII.

At the opening and closing of each session of the Court, all persons in the Courtroom not limited by a physical condition will stand and will remain standing until the Court is formally opened or closed by the Court Officer.

Attorneys and parties acting *pro se* shall stand while addressing the Court or questioning witnesses unless excused by the Court because of physical or health conditions.

The area between the bench and the bar in the courtroom is for the use of the litigants and counsel in the cases being considered by the Court. Any staff or others assisting counsel should notify the Court Officer so that the first row behind the bar may be made available for their use.

Rule IX.

The Clerk shall set cases on the trial dockets on such dates and in such number and order, as the Judge of each Division of the Court shall specify.

Cases set for trial may be removed from the trial docket only by an Order signed by the Judge of the Division to which the case is assigned.

Rule X.

Court reporters employed by a party or parties shall fill out and file with the Clerk the Court approved form.

Rule XI.

The prevailing party upon any Motion or a trial shall prepare an appropriate Order of Judgment for entry in the case. The Judgment or Order shall be filed with the Clerk within ten (10) business days following the Court's ruling or trial. It shall be approved by all counsel of record and any *pro se* parties, or shall bear a certificate of service on any counsel or *pro se* party who refuses to approve it as required by TRCP Rule 58(2).

Any counsel or *pro se* party who refuses to approve an Order of Judgment shall file an alternate proposed Order or Judgment with the Clerk within (5) five business days following service of the proposed Order or Judgment filed by the prevailing party. Such alternate proposed Order or Judgment shall bear a certificate of service as required by TRCP Rule 58(2).

RULES OF PRACTICE FOR THE KNOX COUNTY CIRCUIT COURT, DIVISION IV, SIXTH JUDICIAL CIRCUIT

EFFECTIVE SEPTEMBER 1, 2015

TABLE OF CONTENTS

RULE.

1. ADOPTION OF RULES
2. COURT SESSIONS
3. COURT RECORDS
4. COMPLAINTS AND PETITIONS; PROCESS; AND SUMMONS
5. SUBPOENAS
6. SETTING CASES, MOTIONS AND PRE-TRIAL HEARINGS
7. CONTINUANCES
8. LIMITATIONS ON FILING DISCOVERY MATERIAL INTERROGATORIES, REQUESTS TO ADMIT AND REQUESTS FOR PRODUCTION
9. MOTIONS TO COMPEL DISCOVERY
10. COURT COSTS
11. ENTRY OF JUDGMENT AND ORDERS
12. NOTICE OF ENTRY OF JUDGMENT
13. CHILD SUPPORT AND ALIMONY PROCEEDINGS
14. PRE-TRIAL STIPULATIONS AS TO SEPARATE AND MARITAL PROPERTY
15. PARENTING PLANS

RULE.

16. PROOF OF MEDICAL COVERAGE
17. *Retained for use by older cases; Rule 17 has been supplanted by Local Rules 25 and 26 below, effective January 1, 2000.*
18. ORDERS OF RECONCILIATION
19. FEE REQUESTS
20. CRITERION DAY
21. SUPPORT ARREARAGES
22. PUBLICATION
23. TRIAL MANAGEMENT
24. PRESERVATION OF FINANCIAL RECORDS
25. TOBACCO SMOKE
26. *PENDENTE LITE* CO-PARENTING
27. PERSONAL PROPERTY ITEMS
28. [RESERVED]
29. [RESERVED]
30. INTERVENTION PROGRAMS FOR DOMESTIC VIOLENCE
31. ELECTRONIC FILING OF PETITIONS FOR ORDERS OF PROTECTION

Rule 1. ADOPTION OF RULES

These local rules are adopted in conformity with Supreme Court Rule 18 for the Knox County Fourth Circuit Court effective September 1, 2015, replacing all previous rules and policies governing Fourth Circuit Court. These rules are in addition to and not a substitute for the Uniform Local Rules of Practice for the Sixth Judicial District. To the extent these rules are inconsistent with the Uniform Rules, the Uniform Rules prevail. Any of these rules may be waived or modified by the Court when the Court finds that justice requires the waiver or modification. The rules are effective for all litigants and attorneys appearing before the Court. [Adopted effective September 1, 2015]

Rule 2. COURT SESSIONS

Subject to such variations as the Court may find necessary or convenient, the hours of Court shall be from 9:00 a.m. to 4:30 p.m., subject to noon recess from 12:00 noon to 1:30 p.m., and with ex parte matters to be set specially. [Adopted effective September 1, 2015]

Rule 3. COURT RECORDS

All court papers and records shall be kept by the Fourth Circuit Court Clerk. No person except the Clerk and his deputies shall be allowed access to the vault where files are kept. No file may be withdrawn except by Court order. [Adopted effective September 1, 2015]

Rule 4. COMPLAINTS AND PETITIONS; PROCESS; AND SUMMONS

Every complaint and petition shall respectively state the following, if known, for each party: residential address as well as the place and address of employment. Every complaint and petition shall also state the address of the place where each defendant or respondent may be served with process. Upon the filing of a complaint or petition for which a summons is required, the party or the party's counsel filing the complaint or petition may prepare and submit the summons for issuance by the Clerk. Counsel and unrepresented parties are responsible for keeping the Clerk's Office advised of correct mailing address and other identifying information at all times. It is not the responsibility of the Court or the Clerk's Office to investigate the whereabouts of a party or attorney.

Each initial pleading or motion where the custody of a child is at issues shall set forth the information required by this Rule as well as that required by § 36-4-106 as well as the information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann § 36-6-201 et seq., and in particular by Tenn. Code Ann. § 36-6-224. If the information and envelope required by Tenn. Code Ann. § 36-4-106 is not provided to the Clerk at the time of filing, the Complaint shall not be filed. [Adopted effective September 1, 2015]

Rule 5. SUBPOENAS

All requests for subpoenas for trials or hearings shall be in writing, fully completed. The subpoena shall state the witness's full name, a telephone number for the witness, the date, location, and time for which the witness is being subpoenaed, any other requirements for the witness to comply with, and the location where the witness may be served. Once filed, the subpoena shall be executed by the Clerk and issued. The absence of a witness for a trial or hearing shall not be a ground for continuance unless a witness subpoena request complying with the above was accomplished by the party seeking the continuance no later than seven (7) days prior to the trial or hearing and the failure to obtain private service of a subpoena upon the witness is satisfactorily explained by the party seeking the continuance. [Adopted effective September 1, 2015]

Rule 6. SETTING CASES, MOTIONS AND PRETRIAL HEARINGS

All pre-trial and post-trial motions shall be set by counsel with the judicial secretary. Hearings for motions shall be limited to one hour. The Court, with or without hearing oral argument, may decide pre-trial motions. If not disposed of before hearing, motions shall be heard and disposed of in open court upon motion days. The dates for motion days are posted at www.knoxcounty.org.

In order to be considered, a response to a motion must be filed prior to the day upon which the hearing is scheduled. If it is less than five (5) days before

the day of the scheduled hearing, counsel are required to furnish a copy to the judicial secretary at the time the response or reply is filed.

Settings in all newly commenced litigation in which an answer has been filed will be set for trial by counsel upon application to the judicial secretary.

Counsel will set all uncontested matters by obtaining settings from the Clerk. The Clerk will provide a date for prompt hearing pursuant to statutory periods.

If any counsel or *pro se* party is unavailable upon a day on which a motion is set for oral argument, such counsel or *pro se* party shall obtain another date acceptable to the Court and all other counsel and shall submit an order before the date of the scheduled hearing approved by all counsel and *pro se* parties setting the motion for hearing on such alternate date. [Adopted effective September 1, 2015]

Rule 7. CONTINUANCES

Cases set for trial or hearing may be continued only by order or leave of the Court. Any request to continue a case or hearing shall be argued before the date of the scheduled hearing. The Clerk's office cannot excuse a party or counsel from appearing in court. [Adopted effective September 1, 2015]

Rule 8. LIMITATIONS ON FILING DISCOVERY MATERIAL INTERROGATORIES, REQUESTS TO ADMIT AND REQUESTS FOR PRODUCTION

(A) *Documents not to be filed.* Pursuant to Tenn. R. Civ. Pro. 5.05, the following shall not be filed with the Court except pursuant to special order of the Court or for use in proceedings: depositions upon oral examination; interrogatories; requests for production; requests for admissions; and answers and responses thereto.

(B) *Number.* No party shall serve upon any other party more than 30 interrogatories or requests to admit or requests for production, however numbered, lettered or sub-divided, without leave of Court. If a party is served with interrogatories or requests to admit or requests for production exceeding 30, response to only the first 30 shall be made. Any motion seeking leave to serve more than 30 interrogatories or requests to admit or requests for production shall set out each additional interrogatory or request to admit or requests for documents together with the reason establishing good cause for exceeding the limit of 30.

(C) *Responses.* The response to each interrogatory or request to admit or requests for production shall be preceded by the interrogatory or request to admit. [Adopted effective September 1, 2015]

Rule 9. MOTIONS TO COMPEL DISCOVERY

All motions to compel discovery shall be signed and filed with the Clerk and shall include a certificate of service to the adverse party or counsel and may be accompanied by a proposed order. The proposed order will be tendered by the Clerk to the Judge for entry ten (10) days after filing the motion unless the adverse party or counsel requests in writing a hearing prior to the expiration of the ten (10) day period. Any motion to compel discovery not accompanied by

a proposed order must be set for hearing by counsel with the judicial secretary. [Adopted effective September 1, 2015]

Rule 10. COURT COSTS

All orders and judgments that tax costs shall contain both the current home address and employment address of those charged with all or any part of the costs of the cause and shall be signed by the tendering party(ies) or their counsel. In any event, the bill of costs may be sent to those responsible for costs in care of the attorney for such responsible person(s). Sureties on bonds may only be released upon compliance with Tenn. Code Ann. § 29-33-101 et seq. and with a provision for a substitute surety. [Adopted effective September 1, 2015]

Rule 11. ENTRY OF JUDGMENT AND ORDERS

Any counsel or *pro se* party who refuses to approve an order or judgment shall file an alternate proposed order or judgment with the Clerk within five (5) business days following service of the proposed order or judgment filed by the prevailing party. Such alternate proposed order or judgment shall bear a certificate of service as required by Tenn. R. Civ. Pro. 58(2). If an alternate order or judgment is not received in the time specified, the filed order or judgment shall be entered. All orders should be entered within 30 days of the Court's ruling. [Adopted effective September 1, 2015]

Rule 12. NOTICE OF ENTRY OF JUDGMENT

Any party or counsel requesting the Clerk to mail or deliver a copy of the entered judgment to all parties or counsel under Tenn. R. Civ. Pro. 58.03 shall present with the judgment a list of all parties or their counsel entitled to receive notice and the current mailing addresses for all parties or counsel entitled to notice. In addition, the party requesting notice of entry shall provide for party or counsel on their notice, pre-addressed envelopes with sufficient postage affixed to pay for mailing. [Adopted effective September 1, 2015]

Rule 13. CHILD SUPPORT AND ALIMONY PROCEEDINGS

(A) GENERAL:

Pendente lite support matters may be set on a motion day. Because of the one-hour time limitation for motions, the parties are encouraged to utilize the child support magistrate when feasible. Motions seeking child support or child support and alimony may be set, but child support motions shall be addressed first.

(B) CHILD SUPPORT:

A party requesting *pendente lite* child support shall file the following documents with the complaint for divorce or with a motion for *Pendente lite* support filed after filing a complaint for divorce. The following must be filed at least five days prior to any hearing:

- (1) a financial affidavit reflecting his/her average monthly expenses and income;
- (2) his/her previous year's tax return;
- (3) his/her most recent pay stub reflecting year-to-date income; and

(4) any other relevant financial facts that the party desires the Court to consider.

No later than two (2) business days prior to a hearing for *Pendente lite* child support, the defendant or respondent shall file and serve with his or her answer or response, the following documents:

- (1) a responsive financial affidavit setting forth his/her average monthly gross and net income and average monthly expenses;
- (2) his/her previous year's tax return;
- (3) his/her most recent pay stub reflecting year-to-date income; and
- (4) any other relevant financial facts that the party desires the Court to consider.

Upon the filing of a motion for *pendente lite* child support, the issue shall be adjudicated on the basis of the above documents filed, but not until the responding party has had appropriate time under the Tennessee Rules of Civil Procedure to respond to the complaint or the motion requesting support. If the parties proceed utilizing the child support magistrate and either is dissatisfied with the magistrate's Findings and Recommendations, either party may appeal within ten (10) days following receipt of said ruling and request a hearing before the judge of the Fourth Circuit Court.

(C) SPOUSAL SUPPORT:

A party requesting *pendente lite* spousal support or a modification of spousal support, shall file:

- (1) the documents identified in section (B); and
- (2) a statement regarding the application of any of the other statutory factors contained in Tenn. Code Ann. § 36-5-121 that the party wishes to be considered by the Court.

The defendant or respondent shall then file:

- (1) the responsive documents set forth under section (B).
- (2) a statement regarding the application of any of the other statutory factors contained in Tenn. Code Ann. § 36-5-121 that the respondent wishes to be considered by the court.

On motion days on which spousal support is initially set by the court of record, the judge shall adjudicate spousal support issues in the style of appellate argument on the basis of the documents submitted by the parties.

[Adopted effective September 1, 2015]

Rule 14. PRE-TRIAL STIPULATIONS AS TO SEPARATE AND MARITAL PROPERTY

To aid discovery and streamline the presentation of proof at trial, the parties shall prepare a joint statement of assets and debts no later than ninety (90) days after service of a complaint for divorce upon the defending party. The required form is available as an Excel spreadsheet from the judicial secretary. Fifteen (15) days after service is accomplished, counsel for Plaintiff (or the Plaintiff if *pro se*) shall serve upon Defendant's counsel (or upon Defendant if *pro se*) a draft property table that identifies all assets of the plaintiff or the marriage including, but not limited to: real property, vehicles, bank accounts, investments, retirement interests, closely held business interests, stocks, bonds, or cash value in life insurance. Individual items of household furnish-

ings need not be specified in the initial draft. In addition, the table will identify all debts owed by Plaintiff or the parties.

Forty-five (45) days after the date of service of Plaintiff's table, Defendant shall serve upon Plaintiff a revised table that identifies any additional assets or debts of which Defendant is aware and that were not listed by Plaintiff. After receipt of the list, the parties shall confer and prepare a joint list of all assets and debts.

Unless the Defendant has been defaulted, Ninety (90) days after service of the complaint upon Defendant, the joint list shall be filed with the Court. As discovery progresses, the value of an asset or debt may change as may the characterization of an asset or debt as marital, separate, or disputed based upon information learned in discovery.

At least seven (7) business days before the day of trial, the parties shall provide in electronic form to the Court's secretary and file with the Clerk two (2) paper copies of the JOINTLY PREPARED property table executed by counsel setting forth, pursuant to the criteria of Tenn. Code Ann. § 36-4-121: (1) the real and personal *separate* property and debts of each of the parties; (2) the real and personal *marital* property and debts of the parties; (3) the *remaining* real and personal property and debt of the parties, the character of which is disputed and to be decided by the Court. This last item consists of all real and personal property and debt of the parties not covered under the first two stipulations. At the time the copies are filed with the Clerk.

If either party separately desires – or the parties together desire to do so – he/she/they may additionally propose to the Court, at trial and after complying with the foregoing paragraph, a division of all or part of the marital property. The Court is not bound by the proposal but will give proper consideration to the wish(es) of the party(ies). [Adopted effective September 1, 2015]

Rule 15. PARENTING PLANS

(A) In all actions seeking the establishment of residential schedules and/or parenting responsibilities, the plaintiff or petitioner shall file with the complaint temporary parenting plans agreed upon by the parties, or, if no agreement has been reached, a proposed temporary parenting plan of the plaintiff or petitioner.

(B) If no agreement has been reached, the defendant or respondent shall file with the answer, the defendant's or respondent's proposed temporary parenting plan.

(C) If only one party files a proposed temporary parenting plan in compliance with Rule 15(a) or (b), that party may petition the Court for an order adopting that plan by default. Upon a finding that the plan is reasonable and is in the best interest of the child(ren) in accordance with Tenn. Code Ann. § 36-6-403(2), the plan may be adopted by the Court by default.

(D) If both parties submit a proposed temporary parenting plan but cannot agree on a temporary parenting plan, then the parties shall engage in dispute resolution subject to the limitations and restrictions set forth in Tenn. Code Ann. § 36-6-409. In the event dispute resolution is not available or the parties are still unable to agree, either party may request a hearing for the Court to establish a temporary parenting plan. Pending that hearing, absent injunctive

relief being granted by the Court, the co-parenting schedule shall be as set forth in Rule 26 below.

(E) If the parties are unable to agree on a permanent parenting plan, the parties shall participate in alternative dispute resolution and comply with the provisions of Tenn. Code Ann. § 36-6-404(c)(3). If the parties have not engaged in dispute resolution, or if neither party has filed a proposed permanent plan at least fifteen (15) days prior to the trial date, then the trial of the case shall be continued unless an agreed permanent parenting plan is submitted on or before the date for trial.

(F) If the case is continued for failure to comply with Rule 15(e), then the parties shall, within thirty (30) days of the date the trial was continued, submit proposed permanent parenting plans and participate in dispute resolution. Failure to do so may result in the imposition of any of the sanctions set forth in Rule 16 of the Tennessee Rules of Civil Procedure. [Adopted effective September 1, 2015]

Rule 16. PROOF OF MEDICAL COVERAGE

Any party ordered to maintain medical insurance coverage for minor children shall provide the other party with all necessary documents evidencing proof of coverage. This duty is a continuing one. Medical expenses include but are not necessarily limited to medical, dental, orthodontic, psychiatric, and psychological expenses. [Adopted effective September 1, 2015]

Rule 17. Retained for use by older cases;

Rule 17 has been supplanted by Local Rules 25 and 26 below, effective January 1, 2000.

(A) In the event that there is no agreement between the parties regarding visitation and there needs to be an Order, co-parenting time shall be as follows:

- a. 1st and 3rd weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m.
- b. December 25 at 6:00 p.m. to January 1 at 6:00 p.m.
- c. July 1-15 each year.
- d. Thanksgiving holidays, from Wednesday at 6:00 p.m. to Sunday at 6:00 p.m.
- e. The child's spring vacation from the time school dismisses until school resumes.
- f. Phone communication at such times and with such frequency as is reasonable.

g. All exchanges of the child shall be done between 6:00 p.m. and 6:15 p.m., with the actual transportation done by that parent who is receiving the child.

(B) Knox County Fourth Circuit Court Four takes judicial notice of the dangers of second-hand, or passive, smoke. Parents shall not expose their children to tobacco smoke in enclosed spaces or allow others to expose them to it. That means NO SMOKING indoors or in vehicles with the children present. It means not allowing them to be in the presence of others who do so. It means parents must keep the air in their home clean.

If children are exposed to smoke, it will be strong evidence that the exposing parent does not take good care of them. [Adopted effective September 1, 2015]

Rule 18. ORDERS OF RECONCILIATION

In all cases of reconciliation, if the cause is not simultaneously dismissed by the plaintiff or parties, an order of reconciliation using substantially the following language shall be submitted by counsel:

It appearing to the Court that a complaint for divorce was filed by Plaintiff herein on _____, and it further appearing upon written stipulation of the parties that they desire to attempt a reconciliation of their differences without jeopardizing the cause of action now pending, as evidenced by their signatures upon this Order,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED

1. That in accordance with Tenn. Code Ann. § 36-4-126, all proceedings in this cause are hereby suspended without prejudice for a period of six (6) months.

2. That during the period of suspension the parties may resume living together as husband and wife and their acts and conduct in so doing shall not be deemed a condonation of any prior misconduct.

3. That this Order shall continue for a period of six (6) months from entry, at which time the Court shall dismiss the complaint, absent motion to the contrary filed by either party.

4. That, should said complaint be dismissed, the costs shall be taxed to the parties, for which execution may issue. [Adopted effective September 1, 2015]

Rule 19. FEE REQUESTS

All applications for attorney fees, other than *pendente lite*, shall be supported by a sworn statement setting forth in detail the basis for the fee sought. The criteria in Tenn. Sup. Ct. R. 8, RPC 1.5, will control the awarding of attorney's fees. [Adopted effective September 1, 2015]

Rule 20. CRITERION DAY

In all orders and judgments specifying a numbered weekend or weekends of a month, Friday shall be the criterion day. For example, if March 1st is a Friday, that is the first weekend of the month. If March 1st is a Saturday, the first weekend of the month begins on Friday, March 7th. [Adopted effective September 1, 2015]

Rule 21. SUPPORT ARREARAGES

Counsel may greatly assist the presentation of cases alleging arrearages in Court-ordered support by using graphic exhibits. [Adopted effective September 1, 2015]

Rule 22. PUBLICATION

(A) The use of service of process by publication in lieu of personal service upon defendants who live out of state, or whose whereabouts are not known, is a means of process intended to give actual notice to defendants, or to persons who, having seen the notice, will contact the defendants.

The due process requirement that parties be notified of proceedings affecting their interests is a vital corollary to one of the most fundamental requisites of

due process, namely, the right to be heard. *Baggett vs. Baggett*, 541 S.W.2d 407 (Tenn. 1976); *Schroeder vs. City of New York*, 371 U.S. 208, 83 S. Ct. 279, 9 L.Ed.2d 255 (1962).

The custom in Knox County of publishing legal notices in a newspaper of limited circulation, read mainly by lawyers, is not a means reasonably calculated effectively to advise parties of legal proceedings.

Truly indigent plaintiffs unable to afford publication in a newspaper of wide circulation have access to publication by posting, *Dungan vs. Dungan*, 579 S.W.2d 183 (Tenn. 1979), 47 Tenn. L. Rev. 845.

All local notices published by newspaper and made a part of the proceedings shall appear in a newspaper of general circulation within the area of Knox County and its contiguous counties. If counsel desire, an abbreviated notice may be placed in the general circulation newspaper bearing (1) the defendant's name in bold type; (2) the style, docket number, court name, and nature of the proceeding; and (3) the name and telephone number of plaintiff's attorney. If this route is chosen, the full legal notice must additionally appear in another Knox County newspaper. An example of an abbreviated notice is:

JOHN ROBERT JONES

A divorce complaint bearing docket number 34567 has been filed against you in Knox County Fourth Circuit Court. Contact plaintiff's attorney, Rebecca Smith, (865) 584-1234.

(B) In all cases in which service of process is to be effected by publication, whether local or otherwise, the Court requires affidavits by counsel and the client, setting forth:

- (a) all efforts made to locate the defendant;
- (b) the success of those efforts;
- (c) that there are no further reasonable efforts to be made; and
- (d) that after all of the foregoing, publication was done in a newspaper of general circulation in that county where the defendant — or persons in contact with the defendant — is/are most likely to be found.

The affidavits should set out, for example, contacts made with past employers of the defendant in Topeka, with his kin in Michigan, with his former neighbors in Knoxville; researches made in city directories, phone books, and by Internet; and all other efforts to locate the defendant and apprise him of his litigation. In short, all efforts must be made — and attested to — that a person would make as if really intending to locate the defendant. [Adopted effective September 1, 2015]

Rule 23. TRIAL MANAGEMENT

If requested by a party, any pending matter may have a trial management conference. BOTH COUNSEL AND BOTH PARTIES MUST BE PRESENT IN OPEN COURT FOR THE TRIAL MANAGEMENT CONFERENCE. The conference may be set with the judicial secretary.

To prepare for the trial management/settlement conference in a new divorce, each attorney shall mail/FAX/hand-deliver to the other a series of proposed filings to comply with Local Rule 14 above. In addition, any proposed exhibits shall be identified and exchanged.

At the trial management conference the following matters will be dealt with:

1. Date for conclusion of any remaining discovery;
2. Date for exchange of binding witness lists;
3. Any agreed upon exhibits shall be numbered sequentially beginning at 1; and
4. Any other pre-trial matters evidentiary or procedural matters counsel may wish to raise. [Adopted effective September 1, 2015]

Rule 24. PRESERVATION OF FINANCIAL RECORDS

As of the date a complaint for divorce is signed, Plaintiff shall take reasonable steps to obtain and preserve for production all data for the current calendar year and the previous calendar year that is available through online access for any financial interest or account in his/her name or for which he/she has an interest or obligation, including but not limited to bank accounts, retirement interests of any kind, brokerage or stock accounts, whole life insurance, loans, and credit card debt. In the event that online access is not available, all paper statements or other information pertaining to a financial interest or debt must be preserved for production until the case is concluded and a final judgment has been entered. Upon service of a complaint for divorce, Defendant shall be bound by the requirements set forth within this rule. [Adopted effective September 1, 2015]

Rule 25. TOBACCO SMOKE

Knox County Fourth Circuit Court takes judicial notice of the dangers of second-hand, or passive, smoke. Parents shall not expose their child(ren) to tobacco smoke in enclosed spaces or allow others to expose them to it. That means NO SMOKING indoors or in vehicles with the child(ren) present. If the child(ren) are exposed to smoke, it will be strong evidence that the exposing parent is not properly caring for them. [Adopted effective September 1, 2015]

Rule 26. PENDENTE LITE CO-PARENTING

(A) In the event that there is no agreement between the parties regarding co-parenting time and the parties have not sought injunctive relief, co-parenting time pending a hearing shall be as follows:

1. Ongoing co-parenting time will follow a two-week schedule; the non-residential parent will enjoy:

Week One: Friday at 6:00 p.m. until Monday morning, returning and transporting the child(ren) to school or daycare at the appropriate time, or to other parent at 9:00 a.m.. Week one begins on the Friday following the filing date of the complaint for divorce.

Week Two: Thursday evening pick-up from school or daycare, at the appropriate time, or from other parent at 6:00 p.m.; Friday morning, returning and transporting the child(ren) to school or daycare at the appropriate time, or to other parent at 9:00 a.m.

2. Summer: June 1-15 and July 1-15 to the non-residential parent. June 15-30 and July 15-30 to the residential parent. These 15-day periods are continuous, overriding #1 above (as noted below in #10).

3. Thanksgiving: Wednesday at 6:00 p.m. to Monday morning, returning and transporting the child(ren) to school or daycare at the appropriate time, or

to other parent at 9:00 a.m. In odd years the non-residential parent enjoys this time, in even years the residential parent.

4. Spring Break: The non-residential parent enjoys this time in even years, from Friday at close of the school the child attends until Monday morning return to school as above. If the child is not in school, then spring break follows the period of the Knox County school system; however, if the child has older siblings, the spring break for that child shall follow that of the oldest minor sibling. In odd years, the residential parent enjoys this time.

5. Christmas Break: The non-residential parent enjoys December 25 at 6:00 p.m. until returning and transporting the child(ren) to school, or daycare on the day of school reopening, or to the other parent at 9:00 a.m. The residential parent enjoys from 6:00 p.m. of school out until December 25 at 6:00 p.m.

6. Federal holidays which follow the non-residential parent's weekend extend a weekend until Tuesday morning.

7. Mother's Day with mother, and Father's Day with father, 9:00 a.m. to 9:00 p.m.

8. All exchanges of the child(ren) shall be done within a 15-minute window (e.g., between 6:00 p.m. and 6:15 p.m.).

9. Except as expressly provided above, transportation shall be done by that parent or parent's agent who is receiving the child(ren).

10. Holiday/extended co-parenting time takes precedence over the ongoing Week One/Week Two co-parenting schedule.

For a new divorce matter or a request to modify an existing order concerning coparenting, injunctive relief as provided for within Rule 65 of the Tennessee Rules of Civil Procedure shall be the only method to obtain the entry of an order addressing coparenting time without first proceeding with the process set forth in Rule 15 above.

(B) Tenn. Code Ann. § 36-6-110 (Parents' Bill of Rights) is incorporated in this rule as if set forth verbatim herein.

(C) Rule 26 replaces Rule 17 of the Local Rules of the Fourth Circuit Court as of its effective date of adoption, January 1, 2000. Historical Rule 17 will continue to apply in those cases which incorporated it specifically, or its provisions, prior to the effective date of Rule 26. After the effective date of Rule 26, parties can – as always – elect whatever co-parenting provisions they wish by agreement, reduced to court order, including provisions which may in fact duplicate historical Rule 17. [Adopted effective September 1, 2015]

Rule 27. PERSONAL PROPERTY ITEMS

In *pendente lite* divorce proceedings in which the furniture and furnishings of the parties are situated dominantly with one party, counsel may anticipate, upon application being made therefor by motion, an order containing substantially the following provisions:

A. Each party shall forthwith furnish to the other those items of personal property which are undeniably separate property as defined by Tenn. Code Ann. § 36-4-121.

B. Each party shall immediately furnish to the other those items of personal property which are of a uniquely personal nature.

C. Each party shall furnish to the other a portion of marital furniture and furnishings consistent with individual dignity.

D. A full and exact inventory shall be kept of all items furnished under A, B, and C. Videotaping may be employed if desired.

E. Each person holds each and every item of marital and separate property as trustee for the other until trial. Each is enjoined from wasting, disposing, converting, selling, or in any wise changing the character of, any of the items except by agreed order entered with the Court and signed by counsel.

F. Should a party withhold items of category A, B, or C above, the withholding party does so at his/her peril. A party's decisions as to the items in category A, B, and C above, will be examined at trial as evidence of that party's posture in equity. [Adopted effective September 1, 2015]

Rule 28. [RESERVED]

Rule 29. [RESERVED]

Rule 30. INTERVENTION PROGRAMS FOR DOMESTIC VIOLENCE

As to persons coming before this court who are violent to, and/or control others, from and after 31 March 2006, this court will refer such persons only to programs certified by the State of Tennessee as qualified to provide intervention in those behavior patterns. See Tenn. Code Ann. § 38-12-101, *et seq.* [Adopted effective September 1, 2015]

Rule 31. ELECTRONIC FILING OF PETITIONS FOR ORDERS OF PROTECTION

Pursuant to Tenn. Code Ann. §§ 16-1-113 and 16-1-115, as well as Tennessee Attorney General's Opinion #00-124, the following shall be the rule for the electronic filing of petitions for orders of protection:

Internet Filing

The filing of petitions electronically through the internet is predicated on the availability of an electronic signature pad. Presently, the only authorized signature pad is located at the Family Justice Center (FJC). This device will allow the petitioners' signatures to be transmitted to the Clerk's Office and will not retain in any way the signatures for further use or recognition. Petitioners will have their signatures notarized at the FJC. Forms will be sent by the internet to the Clerk's Office for the Judge's consideration, possible entry, filing, scheduling, and service of process.

Fax Filing

Petitions may also be filed electronically via FAX. Petition forms will be available electronically or on hard copy. These forms may be completed at the FJC or at an attorney's office. After the application is complete, the petitioner will appear before a Notary Public or Clerk of Court to be sworn and to sign the original affidavit. The application may then be filed by FAX to the Clerk's Office for the Judge's consideration. **However, no process shall issue until the Clerk has received the original hard copy affidavit verifying the petition with the petitioner's signature.** [Adopted effective September 1, 2015]

REVISED RULES OF PRACTICE OF THE CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

EFFECTIVE JUNE 1, 2014

RULE.

- I. Arraignment, Status, and Trial Settings
- II. Motions and Continuances
- III. Trial Preparation
- IV. Negotiated Dispositions
- V. Orders and Judgments

RULE.

- VI. Media Guidelines
- VII. Sentencing
- VIII. Courtroom Procedure and Decorum
- IX. Effective Date

Compiler's Notes. These Revised Rules of Practice of the Criminal Court of Knox County, effective November 1, 1989, replace the former Rules of Practice of Divisions I, II, and III of the Criminal Court of Knox County, which were effective January 7, 1985.

These Revised Rules of Practice of the Criminal Court of Knox County, effective June 1, 2014, replace the former Revised Rules of Practice of the Criminal Court of Knox County, Tennessee, which were effective November 1, 1989.

It is ORDERED that all the Rules of Practice and Procedure now on the Minutes of the Criminal Court of Knox County, Tennessee, be stricken and in lieu thereof the following rules will be observed in the conduct of the business of the Criminal Court, effective June 1, 2014, the same to be spread upon the Minutes of each Division of said Court.

Rule I. Arraignment, Status, and Trial Settings

Upon arraignment, appointment, or appearance of counsel the Court will set a trial date or status date as determined by the Court. Counsel will be prepared for the transfer of the case among the divisions of the Knox County Criminal Court. Permitting limited appearance of counsel to move for reduction of bond will be within the discretion of the Court. Arraignment shall include the determination of the defendant's counsel of record. Once made counsel of record, counsel will not be relieved for non-payment of fees.

Rule II. Motions and Continuances

(1) Time of Filing: All Pre-Trial Motions must be filed in accordance with any motion deadlines established by the Court and the Rules of Criminal Procedure. If a motion deadline is not set by the Court, Pre-Trial Motions shall be filed not later than 60 days before the trial date, unless good cause can be shown.

(2) Written Responses: If written responses are requested, a separate notice shall be included with the Motions. A party shall file written responses within 30 days of the receipt of the notice unless otherwise provided by law.

Service of notice may be made by U.S. Mail, facsimile, electronic delivery, or direct delivery. If electronic delivery is employed, return receipt must be requested. If return receipt is not received the moving party must make contact with opposing counsel to ensure receipt.

(3) Discovery: Defense counsel seeking discovery shall file a written request with the District Attorney General pursuant to Rule 16 of the Tennessee Rules of Criminal Procedures. A copy of this written request shall also be filed with the Court Clerk. A Motion to Compel Discovery should only be filed if the District Attorney General has failed to respond within 30 days of the initial request. The state shall file written responses when requested in writing.

(4) Continuances: Cases may not be continued by agreement and may be continued only by leave of Court. After a case has been set for trial it will not be continued except for good cause which shall be brought to the attention of the Court as soon as practicable before the date of the trial. Absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with these rules and the Tennessee Rules of Criminal Procedure. If a case is continued, a new court date will be assigned at the time of the continuance.

Rule III. Trial Preparation

(1) Juries: The state shall be responsible for calling in a jury for trials by notification to the Court Clerk.

(2) Witnesses:

(a) The state shall be responsible for the transportation of prisoners who are state witnesses by request to the Judge's Administrative Assistant at least two weeks before trial. A copy of the Order of Transportation will be made available.

(b) Defense counsel shall likewise be responsible for the transportation of prisoners who are defendants or defense witnesses by request to the Judge's Administrative Assistant at least two weeks before trial. A copy of the Order of Transportation will be made available to opposing counsel.

(3) Subpoenas: Subpoenas shall be requested at least 10 days before trial. If subpoenas are taken by counsel return shall be made to the Clerk within 5 days of service.

Rule IV. Negotiated Dispositions

If the parties reach a negotiated settlement in a case, the Court must be notified on or before the plea deadline as set by the court. The date of plea deadlines shall be in the court's discretion.

Rule V. Orders and Judgments

(1) All papers, including pleadings, Motions, Briefs, and proposed Orders shall be filed with or submitted to the Clerk and served on opposing counsel as provided for in section II paragraph (2) of these rules; provided however that

ex parte Pleadings and Orders shall be filed under seal. Copies of Pleadings, Motions and Briefs may be presented to the Judge's Administrative Assistant for review prior to the hearing date. Proposed Judgments and Orders shall be presented to the Judge's Administrative Assistant upon notice to opposing counsel.

(2) When directed by the Court, counsel will prepare proposed Orders for entry by the Court. All proposed Orders must be filed with the Clerk and served upon opposing counsel within 3 business days following the day on which a ruling is made by the Court. Counsel for both parties must approve the Order prior to submission to the court. If the parties do not agree as to the contents of the Order or Judgment, the matter should be set on the docket at the first available court date.

(3) After a defendant is sentenced, the District Attorney General shall complete and file the Judgment in each case within thirty (30) days. All judgments shall be prepared in accordance with the requirements of Tennessee Code Annotated 40-35-209(e)(1) and any other relevant rules promulgated by the Tennessee Supreme Court.

Rule VI. Media Guidelines

(1) Requests for media coverage must be made, in writing, to the Clerk at least two days before the trial or hearing to be covered.

(2) No photographs, video taping, or any other method of capturing the images of jurors will be permitted.

(3) No photographs, video taping, or any other method of capturing the images of minors will be permitted.

(4) The hallway behind the Court is considered part of chambers and no photography, interviews, or any journalistic activity will be allowed there.

Rule VII. Sentencing

(1) The notice required by T.C.A. 40-35-202(a) shall contain the following information:

(a) The class designation of any alleged enhancing felony as contained in T.C.A. 40-35-118.

(b) The enhanced range demanded by the state.

(2) Upon a finding of guilt, the statement set forth in T.C.A. 40-35-202(b) shall be filed in every case 10 days before the sentencing hearing.

Rule VIII. Courtroom Procedure and Decorum

(1) The space within the bar is reserved for the parties engaged in the case on trial, attorneys, court officials, and assistants to counsel with permission of the Court. No one else shall be permitted in this area at any time, which includes recess periods.

(2) At each opening of each session of the Court, all persons in the Courtroom will arise, and, with the Judge, remain standing until Court is formally opened by the Bailiff.

(3)

(a) Audience seats shall be reserved for those citizens having business with the Court, and for the immediate relatives of the parties (fathers, mothers, sisters, brothers, children and spouses).

(b) Prosecuting witnesses and relatives shall be seated in that section of the audience directly behind the counsel table occupied by the prosecutor and the State's attorney; and the defendant's witnesses and relatives shall be seated in that section of the audience directly behind the counsel table occupied by the defendant and his/her attorney.

(4) Any remaining seats may be occupied by spectators on a first-come, first serve basis. No standing shall be permitted. After all seats are filled the Bailiff shall see that no other person is admitted without express permission of the Court.

(5) No food, drink, newspaper, magazines, cameras, or recording devices are permitted in the Courtroom without permission of the Judge.

(6) There shall be no loitering, loafing, or collecting of spectator groups outside the Courtroom doors, or in the halls adjacent to the Criminal Courtrooms, when the Courts are in session.

(7) All persons' cell phones shall be turned off or set to a silent mode while in the Courtroom. No texting shall be permitted except by counselor Court personnel when conducting Court business. Any electronic device that makes an audible noise during court proceedings shall be confiscated by the Bailiffs and remanded to the Court. The Court may fine the owner of the device up to \$50.00 at the Court's discretion.

(8) Attorneys who are attending more than one court on a single day, shall check in with the Bailiff prior to court and leave his or her location or cell phone or pager number where he or she can be reached.

(9) Cases shall not be added to the docket, nor shall files be sent to the courtroom without the permission of opposing counsel.

(10) All defendants, witnesses, attorneys, and spectators shall conduct themselves with proper decorum at all times. There shall be no demonstrations, noise, loud talking or any act of misconduct permitted either inside the courtroom or outside the courtroom, or in any other area irrespective of its location as long as it is near enough to interfere with or to disrupt orderly proceedings of the Courts.

(11) Each attorney, whether representing the State or the defendant, as an officer of the Court, shall be expected to insure the orderly behavior of his or her prosecutor or defendant respectively.

(12) The sessions of the Court will convene each morning Monday through Friday, at 9:00 a.m. Recesses shall be at the Court's discretion unless otherwise scheduled.

(13) During trial, counsel shall not exhibit familiarity with witnesses, jurors, or opposing counsel, and the use of first names for adults shall be avoided. During opening statement or argument, no juror shall be addressed individually by name.

(14) Bench conferences should be requested only when absolutely necessary in aid of a fair trial. Counsel may never lean upon the bench nor appear to engage the Court in conversation in a confidential manner.

(15) Counsel should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect the client, and should respectfully await the completion of the Court's statement or opinion before undertaking to point out objectionable matters. When objection is made to a question asked, counsel should refrain from asking the witness another question until the Court has had an opportunity to rule upon the objection. Objecting counsel shall state the legal grounds without argument or discussion except by leave of Court.

(16) No attorneys, parties, or any other person having any interest in a case set for trial shall engage in any conversation with any juror serving in that Court until the juror's term of service has ended, except by leave of the Court.

(17) The Bailiff and other officers serving the Court will be charged with the responsibility of requiring compliance with these standards of courtroom conduct and decorum.

Rule IX.
Effective Date

These rules shall take effect June 1, 2014.

UNIFORM LOCAL RULES OF PRACTICE COURTS OF RECORD, SIXTH JUDICIAL DISTRICT

EFFECTIVE MARCH 1, 2007

Rule 1

These rules are adopted in conformity with Supreme Court Rule 18. These rules are in addition to and are not a substitute for the existing rules in the Courts of Record for the Sixth Judicial District. To the extent that the existing rules for Chancery Court, Circuit Court, Circuit Court Division IV, and Criminal Court are inconsistent with these rules, then these uniform rules prevail.

Rule 2

The Clerk of Court or the Judicial Secretary will set all cases at issue for trial.

Rule 3

Cases set for trial or hearing may be continued only by order or leave of Court.

Rule 4

The Court with or without oral argument may decide pre-trial motions. If any counsel or pro se party is unavailable upon a day on which a motion is set for oral argument, such counsel or pro se party shall obtain another date acceptable to the Court and all other counsel, and shall submit an order before the date of the scheduled hearing approved by all counsel and pro se parties setting the motion for hearing on such alternate date.

Rule 5

No deadlines shall be imposed on plea agreements unless so ordered by the Court to which the case is assigned.

Rule 6

The prevailing party upon any motion or trial shall prepare an appropriate order or judgment for entry in the case. The judgment or order shall be filed with the Clerk within 10 business days following the Court's ruling or trial. It shall be approved by all counsel of record and any pro se parties, or shall bear a certificate of service on any counsel or pro se party who refuses to approve it as required by Tenn. R. Civ. Pro. 58(2).

Any counsel or pro se party who refuses to approve an order or judgment shall file an alternate proposed order or judgment with the Clerk within 5 business days following service of the proposed order or judgment filed by the

prevailing party. Such alternate proposed order or judgment shall bear a certificate of service as required by Tenn. R. Civ. Pro. 58(2).

RULES OF PRACTICE FOR THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

TABLE OF CONTENTS

RULE.	RULE.
1. Authority and Abrogation of Former Rules	17. Subpoenas
2. Code of Professional Conduct	18. Service of Process
3. General Sessions Court Records	19. Expungement Orders and Indigent Fund Orders
4. General Sessions Court Dockets	20. Judicial Magistrates
5. Courtroom Decorum and Procedures	21. Media Coverage
6. Representation and Attorneys	22. Legal Advice by Court Personnel
7. Courtroom Security	23. Review Procedures in the Event Judicial Magistrates Decline to Issue Criminal Warrants or Criminal Summons for Failure of Probable Cause
8. Security of Chambers and Adjacent Areas	24. Social Security Identification Numbers
9. Civil Case Dockets	25. Civil Process Documents
10. Civil Case Continuances	26. Bail Bondsmen
11. Mediation	27. Court Appointment List
12. Garnishments	
13. Criminal Case Dockets	
14. Criminal Case Continuances	
15. Compliance Docket	
16. Audiovisual Initial Appearance	

Compiler's Notes. These rules were amended effective February 1, 2016.

RULE 1. Authority and Abrogation of Former Rules

The rules of General Sessions Court of Knox County, Tennessee, are adopted under the authority of Tenn. Code Ann. § 16-15-406 and § 16-15-714. All former rules are abrogated except as readopted herein. [Amended 1995; amended effective February 1, 2016.]

RULE 2. Code of Professional Conduct

The ethical standards for the practice and the administration of law in General Sessions Court shall be governed by the *Tennessee Court Rules Annotated*, *Rules of the Supreme Court*, Rule 8, "Code of Professional Conduct." [Amended effective February 1, 2016.]

RULE 3. General Sessions Court Records

The Clerk of Court of General Sessions, Criminal Division, shall be responsible for the custody, control, and safekeeping of all General Sessions Criminal court records and documents. The Clerk of Court of General Sessions, Civil Division, shall be responsible for the custody, control, and safekeeping of all General Sessions Civil court records and documents. Only the Court Clerk or the Clerk's representative shall remove civil warrants, criminal warrants, or any other court documents from the courtrooms, or the clerk's office. All written pleadings, orders, judgments, and executions shall be filed with the

appropriate Court Clerk. Documents submitted for filing shall be in compliance with forms provided by the Clerk as to:

- a. Information contained
- b. Paper size
- c. Print size
- d. Color
- e. Number of copies

With respect to filings not in compliance with this rule, Supreme Court Rule 36(d) shall apply. [Amended 1995; April 1, 2009; amended effective February 1, 2016.]

RULE 4. General Sessions Court Dockets

The dockets for the criminal divisions of General Sessions Court shall be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Criminal Division, in the City-County Building. The dockets for the civil division of General Sessions Court shall be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Civil Division, in the Old Courthouse. Docket scheduling shall be done through the offices of the General Sessions Court Clerks, Criminal and Civil Divisions. Unless changed by the Presiding Judge because of necessity or convenience, the schedules of the courts are:

1. General Sessions Court operates five courtrooms Monday through Friday. First, Second, Third and Fourth Sessions Courtrooms are located on the main floor of the City-County Building. The Fifth Sessions Courtroom is located on the third floor of the Old Courthouse.

2. Courts open at 9:00 a.m. (except Bonded Arraignment Court) for the daily docket. A lunch recess may be taken at noon.

3. The Compliance docket is held daily at 11:00 AM, at the Cost Collection Counter.

4. Misdemeanor Court is held in First Sessions Courtroom. The Domestic Violence docket is heard daily at the start of the misdemeanor docket.

5. DUI Court is conducted in Second Sessions Courtroom.

6. Felony Court is held in Third Sessions Courtroom. The Domestic Violence docket is heard on a priority basis. Drug cases are heard on Wednesday.

7. Cited Court is located in the Fourth Sessions Courtroom. This Court hears environmental cases as well as county ordinances and traffic dockets.

8. Civil Court is located in the Fifth Sessions Courtroom on the third floor of the Old Courthouse. Civil and Detainer cases are conducted in this Court. All collections cases should be scheduled for Monday or Wednesday. Detainer cases should be scheduled for Tuesday. Thursday and Friday are designated special hearing days. Mediation services (free of charge) are available for most cases and are conducted during court on the scheduled docket day.

9. Bonded Arraignment Court is held daily at 10:00 AM in the Fourth Sessions Courtroom. [Amended October 23, 2014]

10. Veteran's Court is held on Monday at 3:00 PM in the First Sessions Courtroom.

11. Recovery Court is held on Wednesday at 3:00 PM in the First Sessions Courtroom.

12. Expungement Review Panel is held on Monday and Thursday (3:00 through 4:15 PM) in the Fourth Sessions Courtroom. [Effective January 1, 2003; amended October 23, 2014; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 5. Courtroom Decorum and Procedures

Each division of General Sessions Court shall have at least one (1) Court Officer, one (1) deputy clerk and one (1) computer clerk in attendance at all times while in session. The bailiff and other officers serving General Sessions Court shall be responsible for compliance to courtroom procedures and decorum.

At the opening of each session of court, everyone shall rise and remain standing until the bailiff formally opens the court. The area within the bar is reserved for the participants in the case before the court, witnesses for the case, and court officers. All other people shall be seated outside of the bar.

The behavior of all participants, attorneys, witnesses, and spectators shall conform to strict standards of decency, dignity, etiquette, and propriety. Everyone entering the courtroom shall be dressed in appropriate attire. The following items of dress are not allowed in the courtroom:

1. Shorts, muscle shirts, T-shirts with inappropriate language nor baggy or low riding pants.
2. See-through clothing, nor backless, tank or halter tops.
3. Hats, bandanas or hoods. (Head coverings may be worn for religious purposes; however, facial features must be clearly visible.)

Spectators shall not communicate (verbal or any other means) with inmates, unless specifically permitted to do so by the Judge.

Food, drink chewing gum and reading materials are not allowed in the courtroom. Everyone shall remove hats, overcoats, raincoats, and sunglasses before entering the courtroom. Demonstrations, acts of misconduct, loud talking, or noise will not be permitted inside or outside the courtroom if it is near enough to interfere with or disrupt orderly court proceedings. Loitering, loafing, or congregating of spectators will not be permitted outside the courtrooms or in the halls adjacent to the courtrooms when court is in session.

While in the Courtroom, cellular/digital devices shall not be utilized and shall be turned off or placed in a silenced mode. Any use or ringing of a cellular/digital device will result in the confiscation of the device.

The use of any RECORDING DEVICE, aural or visual, in the courtroom, is PROHIBITED. Recording devices may be use by counsel and pro se litigants at trial (TCA 20-9-104) and by representatives of the MEDIA (Tennessee Supreme Court Rule 30 and Knox County General Sessions Court Local Rule 21).

The conduct and attire of all attorneys and court attendants shall conform to the professional dignity expected of officers of the court.

All attorneys shall note their representation on civil warrants and criminal warrants. Attorneys will insure the orderly behavior of their clients and be personally accountable to the court for all acts of misconduct or unruly behavior of their clients.

Attorneys shall rise and remain standing when addressing the court, making a statement, argument, or objection to the court or questioning a witness.

People conducting business with the court and their immediate relatives (i.e., spouses, children, parents, sisters, and brothers) shall occupy audience seats first.

When possible, people testifying for the defense should sit on the side of the courtroom directly behind the defendants and their attorneys;

People testifying for the prosecution should sit on the side of the courtroom directly behind the prosecutors.

The defendant shall be seated at the defense table during any hearing or trial, unless waived by the defendant in writing, and ordered by the presiding judge. Issues of identification shall be resolved with the court before any proceedings.

Spectators may use unoccupied seats on first come, first served basis. When all audience seats are filled, the bailiff shall not admit anyone into the courtroom without the court's permission. Standing will not be permitted in the audience unless absolutely necessary. [Amended effective July 1, 2011; amended October 23, 2014; amended effective February 1, 2016.]

RULE 6. Representation and Attorneys

Representation in General Sessions Court may be by licensed attorneys, attorneys representing legal entities, owners of single proprietorships or litigants representing themselves. Attorneys representing litigants must be residents of and licensed to practice law in Tennessee pursuant to the *Tennessee Court Rules Annotated*, *Rules of the Supreme Court*, Rule 7 and qualified and registered with the State Board of Professional Responsibility pursuant to the *Tennessee Court Rules Annotated*, *Rules of the Supreme Court*, Rule 9.

Nonresident attorneys who do not wish to practice law regularly in Tennessee may be associated with a resident attorney in good standing. Then, as a matter of courtesy, nonresident attorneys may be allowed to appear in a case before the court without procuring a Tennessee license, after being introduced by the associated attorney, **if** all courts of the nonresident attorney's state grant a similar courtesy to attorneys licensed in Tennessee.

The Tennessee Supreme Court possesses exclusive jurisdiction to regulate the practice of law before Tennessee Courts, including General Sessions Courts, and the Supreme Court has not authorized a corporate officer or employee who is not an attorney to represent the corporation in a General Sessions Court. [Amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 7. Courtroom Security

The Judge of each division of General Sessions Court shall require all persons entering the courtroom to consent to a search of their person and belongings to insure the safety of participants, court personnel, and government property. Sheriff Deputies will deny admission into the courtroom of

anyone refusing to be searched. [Amended effective December 1, 1996; amended effective February 1, 2016.]

RULE 8. Security of Chambers and Adjacent Areas

The purpose of Court security access control measures is to prevent movement of unauthorized persons into the areas occupied by Judges of the Criminal Courts, General Sessions Courts and the Fourth Circuit Court. The Knox County Sheriff's Department shall enforce these policies and procedures to ensure the integrity of the secured area.

Access Methods and Procedures

1. Proximity Card

Access into the secured area can be gained by use of a proximity card which, when presented to a surface mounted card reader, will unlock the doorway into the area. Authorization for these cards is generally limited to the Judges and their staff, court clerk personnel and employees of the Knox County Sheriff's Department who provide daily support services to the courts.

2. Photo Identification Badges

Photo identification badges will be available for issue to individuals frequenting the secured areas. These are only identification badges and are not affixed to a proximity card. The purpose of these identification badges is to identify individuals who have been approved to enter the secured area thereby expediting their access. The bearer must display the badge to the officer at the Entry Control Point. Upon seeing the badge the officer will release the door for entry. The badge must be displayed at all times while inside the secured area. Failure to comply with this requirement may result in verbal warning and/or expulsion from the secured area. The District Attorney General and staff, the Public Defender and staff, attorneys, Court mediators, State and County Probation Officers and media personnel will access the secured area by this method.

3. Visitor Badge

A person seeking access to the secured area but having neither proximity card nor an identification badge may request a numbered Visitor Badge from the officer on duty at the Entry Control Point. It is the responsibility of the officer to inquire as to which office the visitor wishes to access. The officer will admit the visitor only upon approval of the Judge or member of the Judge's staff with whom the person wishes to see. Under no circumstances shall a visitor be admitted inside the secured area without prior approval of a Judge or member of the Judge's staff. Log entries of all visitors into secured areas shall be maintained. It is mandatory that visitors properly display the Visitor Badge on their person while in the secured area. Upon exit, the visitor will return the badge to the officer at the Entry Control Point and be logged out. In the event a visitor fails to return the Visitor Badge, the officer will attempt to contact the individual to whom the badge was issued and request return. Any visitor who fails to provide a proper explanation as to why a Visitor Badge was not returned may be denied future access into the secured area.

4. Media Personnel

Upon request, members of the media will be issued a photo identification

card that will expedite their access into the secured area within one of the following procedures:

a. The officer at the Entry Control Point contacts the Judge or a member of the Judge's staff to authorize admittance.

OR

b. Each Judge within the secured area may issue a standing order allowing media personnel general access to their chambers. If media personnel request access under such an order, they must enter and exit through the Entry Control Point. The officer at the Entry Control Point shall allow entry into the secured area without contacting the Judge directly.

All members of the media shall properly display their photo I.D. badge while in the secured area. Failure to comply with this requirement may result in verbal warning, expulsion from the secured area and/or revocation of badge and privileges.

5. Special Instructions

Only persons with proximity cards can enter or exit the secured area at all entrances. All other persons must enter and exit through the Entry Control Point. In an emergency, all persons can exit the secured area by holding down the emergency panic bar for 15 seconds. The door will then release and activate the security alarm.

It shall be the responsibility of each authorized user to discourage and prevent "piggybacking" into the secured area by unauthorized personnel. Under no circumstances will an approved user allow entry by another on an authorized card reader activation. Should there be any questions as to an individuals authorization the approved user will direct the party in question to the nearest Entry Control Point. Only the bearer of the badge shall have access. No others shall be permitted to enter with the bearer of the badge.

It shall be the responsibility of the Bailiffs to ensure that access from the courtrooms into secured area does not occur. Any individual having a need to access the secured area from the courtroom must be approved for access by the Judge and be properly badged.

Uniformed law enforcement officer of this jurisdiction will be the only users of the secured area not required to display an identification badge, provided they are in uniform and display proper credentials.

In the event an issued badge is lost or stolen it must be immediately reported to the System Administrator. Failure to timely report this occurrence compromises the integrity of the system and can result in revocation of badge and privileges.

Upon termination or retirement, each badge holder shall return their badge to their supervisor. The supervisor or office holder is responsible for notifying the System Administrator, in writing, when the status of an employee changes and ensure prompt return of the badge to the System Administrator. [Amended effective December 1, 1996; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 9. Civil Case Dockets

Civil cases shall be docketed not less than seven (7) days from the date of issuance of the civil warrant, unless an earlier date is agreed upon by all

participants, or mandated by law. Civil warrants filed on a pauper's oath shall be accompanied by a completed Affidavit of Indigency, which is available at the court clerk's office. The court may require the affiant to appear and answer questions before ruling on the application.

Motions to set installment payments on judgments and motions to stay executions of garnishments shall be filed in duplicate by the defendant or defense counsel, signed by the defendant and sworn to before a notary or the court clerk. The hearing will be set not less than five (5) days after the filing date, and a copy of the motion immediately mailed to the adversary party by the defendant or defense counsel.

Process shall be accomplished as soon as possible after receipt of the civil warrant by the serving officer and return made not less than five (5) days before the trial date to the court clerk, unless otherwise provided for by law.

Attorneys' preference to a particular day must be noted on the top of the civil warrant. [Amended effective February 1, 2016.]

RULE 10. Civil Case Continuances

When both parties fail to appear for a trial, the case will be continued and rescheduled for trial in five (5) weeks by the Court's motion. If neither party appears at the second scheduled trial, and the Clerk of Court of General Sessions, Civil Division, does not receive a request for a continuance from either party, the case shall be dismissed and costs assessed to the plaintiff. The plaintiff's proof will be heard and a judgment entered by the court when the plaintiff appears and the defendant fails to appear at the first scheduled trial.

The defendant's proof will be heard and a judgment entered by the court when the defendant appears and the plaintiff fails to appear at the first scheduled trial.

The plaintiff may have a continuance to present evidence through witnesses in collection cases filed on sworn statements if a defendant enters a sworn denial in the present of the Judge on the trial date. [Amended 1998; amended effective February 1, 2016.]

RULE 11. Mediation

Persons can request information on the Court's mediation program during initial contact with the Clerk of Court of General Sessions, Civil Division or a Judicial Commissioner. If any person wishes to exercise the mediation option, the Court Clerk or Judicial Commissioner will direct the requestor to the Sessions Court Mediation Director or the Community Mediation Center. If all parties in a case agree to mediation, the Court's Mediators will conduct the mediation process for these cases, whenever possible, prior to the scheduled court dates. Persons with settled mediated agreements will present them to the Court for review and appropriate disposition as per the mediated agreement. If the agreement is reached prior to the scheduled Court date, and Court is in session, the parties have the option of disposing of the matter on that date.

Criminal cases will be coordinated with and approved by the District Attorney General, Defense Attorney, Affiant(s)/Complainant(s), and Defendant(s) prior to being scheduled for mediation.

At the start of the Civil Sessions docket the Court will inform eligible cases of the mediation option. Mediators will present a mediation orientation each day in the civil sessions courtroom prior to the official opening of Court. Parties that are eligible and willing to mediate will be taken to the mediation work area. Mediation is voluntary and can be terminate by any of the parties or the mediators at any phase of the mediation process. When a mediated agreement is reached, the parties will return to Court and present the written agreement to the Judge for appropriate action. If the parties do not reach an agreement, but wish to continue mediating, the case will be reset through the Court Clerk. If an agreement cannot be reached, the parties and mediators will return to Court and the case will be called and disposed of in its turn.

Mediation is not a right and is subject to the availability of Court Mediators. [Amended effective February 1, 2016.]

RULE 12. Garnishments

An execution may be issued only on the written garnishment application by the plaintiff, the plaintiff's attorney or agent of record.

Applications must:

- (1) Be completely filled out to be accepted by the court clerk.
- (2) Show the amount of the unpaid judgment for each case.
- (3) Interest may be claimed.

Garnishments shall be released on authorization of a judge or the court clerk.

The court clerk shall dismiss all garnishments at the plaintiff's cost when:

- (1) The amount sought is more than the amount owned.
- (2) The defendant shows proof of payment after judgment indicating a balance less than the amount sought; or
- (3) The docket or receipts indicate the plaintiff received monies and failed to pay court costs.

Second or subsequent Petitions to Pay by Installments shall be set for a court hearing to determine good cause. The court clerk shall not issue any Stay of Garnishment until the court determines good cause and approves the Petition to Pay by Installments.

Motions to stay executions of garnishments shall be:

- (1) Filled out in duplicate by the defendant or defense counsel.
- (2) Signed by the defendant.
- (3) Sworn to before a notary or the court clerk before filing.
- (4) May be set for hearing not less than five (5) days after the filing date.

The defendant or defense counsel must immediately mail a copy of the motion with the hearing date to the adversary.

All monies received through garnishments shall be paid to the Clerk of Court. [Amended effective February 1, 2016.]

RULE 13. Criminal Case Dockets

All defendants have the duty to:

- (1) Know when they are scheduled to appear in court.
- (2) Appear at each hearing, trial setting, subsequent settings, trial, and report back dates.

(3) Be physically present during each hearing or trial unless:

(a) Waived in advance by the defendant in writing.

(b) Ordered by the court.

(4) Appear at each scheduled mediation session.

Failure to appear shall constitute contempt of court.

Issues of defendants' identification shall be resolved with the court before any proceedings.

All defendants shall behave in an orderly, dignified manner. Failure to do so may result in the removal of the defendant from the courtroom pursuant to the *Tennessee Court Rules Annotated, Rules of Criminal Procedure*, Rule 43.

As officers of the court, all attorneys shall be held accountable for the orderly behavior of their clients. [Amended effective December 1, 1996; amended effective February 1, 2016.]

RULE 14. Criminal Case Continuances

The first time a case is set for trial it may be continued for good reason within the sound discretion of the Judge. The second or subsequent time it is set for trial it will be continued only for compelling reasons and reasons that will generally not be found to be compelling will include:

(1) The client has not paid the fee;

(2) The client has not been to see the attorney;

(3) Lack of preparation;

(4) Any other reason that was known or should have been known to the attorneys at the time of the first continuance.

Clerks of Courts are not authorized to grant continuances.

Motions for continuance will be acted upon in open court whenever practicable.

Witnesses shall be notified as far in advance as possible of any continuance granted by the court.

In ruling on continuances, consideration will be given to attorneys who communicate with opposing counsel in advance of the trial date, who move the court for continuance in advance of the trial date, and who communicate with the witnesses to prevent needless inconvenience. [Amended effective February 1, 2005; July 1, 2005; amended effective February 1, 2016.]

RULE 15. Compliance Docket

The Court shall place criminal cases on a Compliance Review Docket after pronouncing judgment, if:

(1) The defendant does not immediately pay into the Court Clerk's Office all fines levied and court costs accessed and due in full.

(2) The defendant has been ordered into treatment, to make restitution, or must complete a program or school as a condition of probation.

(3) The defendant has been placed on supervised probation.

If the defendant has been found by the Court to have a present financial inability to pay in full all fines and costs due, the Court may order the defendant to set up a pay plan with the Clerk's Office with a full payment by a date certain.

Failure of a defendant to make monthly payments or complete any other condition of probation as ordered may result in the defendant being charged with a violation of probation. The case shall be set back on the Court's regular docket for a hearing before the Judge sentencing the violation and may result in the defendant serving the jail sentence. [Amended effective February 1, 2016.]

RULE 16. Audiovisual Initial Appearance

Judicial Commissioners may conduct arrestee initial appearances using audiovisual equipment (closed-circuit television or Skype online) located in the City-County Building Jail and at the Detention Facility.

Audiovisual equipment means electronic devices that permit all individuals participating in the initial appearance to hear, speak, and see each other on a real time basis. Using these devices, the Judicial Commissioner and the court clerk are able to see and communicate with each prisoner. The prisoners have the same capability to see and communicate with the Judicial Commissioner. Facsimile communications equipment is used to permit all individuals participating in the initial appearance to electronically transmit documents between each other.

The initial appearance will be conducted in accordance with Tenn. R. Crim. P. 5, to advise the defendant of the charges against him or her, to determine indigency and to set the matter for hearing by a General Sessions Judge. [Amended 1998; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 17. Subpoenas

Subpoenas shall be issued not less than seven (7) days prior to the trial date in all civil cases and criminal cases.

Clerks will not issue subpoenas at the initial setting of any criminal case when the warrant indicates counsel has not been retained or appointed.

It is the duty of the defense and the prosecution to insure the presence of their subpoenaed witnesses. Failure to subpoena witnesses shall not be grounds for a continuance. [Amended effective February 1, 2016.]

RULE 18. Service of Process

A civil warrant, or any leading process used to initiate an action in General Sessions Court, and subpoenas or summons may be served by any person designated by the party, or the parties' attorney if represented by counsel, who is not a party to the action and is not less than eighteen (18) years of age. Service of other process, post-judgment writs, levies, garnishments and executions shall be by the Sheriff, or the Sheriff's designee, as provided by law.

The General Sessions Court Clerk shall issue process as provided by law, however, the Clerk shall not knowingly issue process to a process server who has had a felony conviction. A civil warrant, or other leading process, presented to the General Sessions Civil Clerk for filing, shall contain the name and address of all parties relative to the cause of action. The clerk issuing the process shall note the issue date upon the process. The Clerk shall keep

information, to be designated by the Court, for the purpose of contacting all private process servers in the event there is a question about the service.

Return shall be made to the Court Clerk not less than five (5) days before the trial date unless otherwise provided by law. Return made less than five (5) days before the trial date will result in the trial date being set one week later on the civil docket. All signatures shall be accompanied by the printed name. The return shall have as a minimum the following legible annotations:

- a. The printed name and address of the person served. (If possible, the served party should sign the process).
- b. Printed names of the persons(s) the server was not able to serve.
- c. Date of service.
- d. If all required parties were not served, a brief reason for non-service.
- e. Court date and time.
- f. For corporate service: annotate the name and corporate position or title of the person served
- g. Printed name and address and the signature of the person who actually served the process.

Process is only valid if served within 60 days from date of issue. All process must be returned to the clerk's office (served or not served) within 65 days from issue date. [Effective August 9, 2002; revised July 1, 2003; February 1, 2005; July 1, 2005; May 7, 2007; June 13, 2008; July 8, 2014; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 19. Expungement Orders and Indigent Fund Orders

The Clerk of Court of General Sessions, Criminal Division and the Sessions Judges administrative office will only accept completed expungement orders and indigent fund order forms.

- (1) Expungement orders must include the following information:
 - (a) Name of defendant, warrant number, charge and date of arrest.
 - (b) Name of the trial judge and court.
 - (c) Signature of defendant or his attorney and certificate of service to Attorney General.
 - (d) Attorney General's approval and signature.
 - (e) A copy of the defendant's arrest warrant with the final judgment OR a copy of the JIMS disposition.
- (2) Multiple arrests, not to exceed three, may be put on one order as long as the date of arrest is the same. Different arrest dates on one defendant require separate orders.
- (3) Records will be expunged without cost on charges that have been dismissed or nolle prossed.
- (4) A \$450.00 fee must be paid to the Clerk for each record expunged where the defendant was placed on a diversion program pursuant to Tenn. Code Ann. § 40-35-312 and § 40-15-102 – 40-15-105.
- (5) When the expungement order is completed in accordance with (1) above, deliver the order to the Attorney General's Office. The Attorney General will review and approved the order, if appropriate, and deliver the signed order to the Sessions Judges office. After the Judge signs the order, the attorney of record will be notified.

(6) After approval, the signed Expungement order should be filed along with a \$25.00 filing fee at the General Sessions Court Clerk's Office. The \$450.00 fee must be paid, if applicable. Please provide an address and a phone number at the bottom of the Expungement order.

(7) At the time of filing, the signed expungement order and four copies must be presented to the clerk.

(8) The Judges office will no longer mail signed original expungement orders to private attorneys. A self-addressed, stamped envelope must be attached to the expungement order if a private attorney wishes for the order to be forwarded for filing to the General Sessions Criminal Court Clerk. If no envelope is attached, the expungement order can be picked up in the Clerk's office.

(9) Only records listed on the order will be expunged.

(10) The Clerk of Court of General Sessions, Criminal Division, is responsible for expungement of records of the General Sessions Court. The certified copies will be distributed to all other agencies included in the arrest process. They are responsible for the expungement of their records.

(11) The Clerk's Office expunges records in the order they are filed. The law allows 60 days for this process to be completed.

(12) All court costs must be paid before the Expungement can be completed.

Indigent Fund Orders:

(1) Indigent fund order forms shall be completely filled out and include:

(a) the name of the appointing judge; and

(b) the signature of the appointed attorney.

All expungements will be processed through the Expungement Review Panel which is held on Monday and Thursday (3:00 through 4:15 PM) in the Fourth Sessions Courtroom. [Amended effective December 1, 1996; July 1, 1998; July 1, 2000; July 1, 2002; July 1, 2004; February 1, 2005; July 1, 2006; August 1, 2006; May 25, 2009; August 10, 2012; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 20. Judicial Magistrates

Initial application for a criminal warrant or criminal summons must be made to a Judicial Magistrate.

Judicial Magistrates may sign criminal warrants or criminal summons for prosecutions initiated by private citizens.

Bad check prosecutions may be initiated through the District Attorney General's Office.

Judicial Magistrates will not sign search warrants until the warrants have been reviewed and approved by the District Attorney General's Office.

Judicial Magistrates may conduct prisoner initial appearances using the interactive closed-circuit television link or Skype online to the jail and the detention facility. [Amended effective July 1, 2004; March 22, 2006; amended effective February 1, 2016; amended effective November 30, 2016.]

RULE 21. Media Coverage

Pursuant to Tennessee Supreme Court Rule 30, the following procedures have been adopted by the General Sessions Court for Knox County in order to facilitate the media coverage contemplated by the rules.

1. Requests for Media Coverage

Media requests for coverage of a particular proceeding shall be made in writing to both the Presiding Judge and Clerk of Court not later than 4:30 PM on the third business day before the event to be covered. The Clerk shall immediately notify all counsel of record of the request for coverage.

2. Media Liaison

Upon receipt of a second media request for coverage of the same proceeding, the Court Clerk shall require the second medium to provide the name, business address, telephone number, and FAX number of the media liaison responsible for organizing all medium that wish to cover the proceeding. Failure of the media to name and cooperate with a media liaison may result in the prohibition of any photographic or recording equipment in the courtroom (except small hand held battery operated tape recorders.) The Clerk of Court shall immediately notify all counsel of record of the name, address, phone number, and FAX number of the media liaison.

3. Pooling Arrangements

Not later than 4:30 PM on the business day before the proceeding to be covered, the media liaison shall provide in writing, to the Presiding Judge, notice of the pooling arrangements that have been made. This shall include specific descriptions of all equipment intended for use in the courtroom, its intended location in the courtroom, and the name of each media entity that operate said equipment.

4. Operation of Equipment

All equipment should be battery powered to eliminate the use of wires, cables, and leads that pose a hazard for people to trip over. If the anticipated length of the proceeding is so great as to make battery powered equipment impractical, all wires, cables, and leads shall be placed against baseboards of walls, taped down, or otherwise placed to minimize or eliminate the hazard of tripping over them.

All equipment requiring installation shall be installed before the Court commences the proceeding to be covered. All equipment take down or dismantling shall take place during recess or after the Court has adjourned for the day.

All photographic equipment shall be situated so as to produce the point of view of the audience. Under no circumstances, unless expressly permitted by the Presiding Judge, are any cameras, still or otherwise, to be taken beyond the Bar of the Court.

5. Courtroom Decorum

All media personnel will conduct themselves quietly and respectfully in the Courtroom. In the event the Presiding Judge orders that a particular witness, juror, or other not be photographed, or that one or more cameras be turned off, said order will be followed without debate. Arguing with the Judge as well as

disobeying the Judge will constitute grounds for terminating any or all photography of the proceeding.

6. Incorporation of Tennessee Supreme Court Rule 30

In all remaining aspects, media coverage of Courtroom proceedings shall be governed by the letter and intent of Tennessee Supreme Court Rule 30. [Amended effective December 1, 1996; amended effective February 1, 2016.]

RULE 22. Legal Advice by Court Personnel

All non-attorney Court personnel are prohibited from interpreting any rules of procedure or giving legal advice. Notice is hereby given to all persons that Court personnel assume no responsibility for any misinformation regarding substantive law, procedural rules, local rules or local customs. [Amended effective February 1, 2016.]

Compiler's Notes. Former Rule 23, concerning the appointment of private process servers, was deleted effective August 9, 2002.

RULE 23. Review Procedures in the Event Judicial Magistrates Decline to Issue Criminal Warrants or Criminal Summons for Failure of Probable Cause

It is the express purpose of this Rule to provide affiants, particularly law enforcement officers, and Judicial Magistrates, guidance and an orderly procedure for review and reconsideration when the Judicial Magistrates finds initially that probable cause doesn't exist to issue a criminal warrant or criminal summons in a particular case. It is also the Court's express intention to discourage "forum shopping" (ie: approaching multiple judicial magistrates or judges) when a particular Judicial Magistrate declines to issue a criminal warrant or criminal summons.

1. Criminal warrants, criminal summons, search warrants and seizure warrants are issued after a judicial proceeding that occurs upon application of the affiant to the Judicial Magistrate on duty. In the event the Judicial Magistrate, in the exercise of his or her independent judicial discretion, declines to issue the criminal warrant or criminal summons for lack of probable cause, the affiant may not re-apply to the same or another Judicial Magistrate until after the following conditions are met:

(a) The affiant shall consult with the District Attorney or his or her assistant who may be available and on duty at the time, and shall conduct whatever additional fact-gathering or investigation the District Attorney or his or her assistant recommends prior to approaching the Judicial Magistrate for the second time;

(b) The District Attorney shall indicate, by conference with the Judicial Magistrate, either in person or by telephone, that the District Attorney has reviewed the allegations with the affiant, that the state intends to prosecute the case, and that based on their review they believe probable cause exists to allow the criminal warrant or criminal summons to issue;

(c) The affiant shall volunteer the information to Judicial Magistrates that the affiant is applying for a warrant to issue for the second time based on the same incident.

2. If, after the above procedures are followed, the Judicial Magistrate still believes that probable cause doesn't exist, the affiant may apply to one Sessions judge to seek out issuance of the criminal warrant or criminal summons, with the assistance of the District Attorney or his or her assistant, who shall confer with the judge as described in (1)(b) above; the judge responsible for supervising Judicial Magistrate is to be contacted for this purpose, and only in the event that that judge is unavailable shall any other judge be contacted.

3. In the event the law allows for discretion to issue a criminal warrant or criminal summons, and the affiant disagrees and believes the Judicial Magistrate chose the charging instrument which is inappropriate under the circumstances, the decision to issue a criminal warrant or criminal summons is, nevertheless, not subject to review.

4. Under no conditions shall it be appropriate for any affiant to approach a Judicial Magistrate three or more times to request that a criminal warrant or criminal summons issue based on the same facts.

5. In all contacts between affiants and Judicial Magistrates, the proceedings shall be conducted with the decree of civility, professionalism and mutual respect as befits a judicial proceeding.

6. Any party seeking to video or audio record any proceeding before a Judicial Magistrate shall first obtain approval from the Judicial Magistrate presiding; such permission shall not be unreasonably withheld, however. [Revised June 3, 2004; amended effective February 1, 2016.]

RULE 24. Social Security Identification Numbers

Social security identification numbers shall not be recorded on General Sessions Court civil process or any other public access court document unless required by state or federal statutes or which disclosure is permitted by the citizen identified by the social security number. If requested to provide or copy a document for public dissemination that contains a social security identification number, The Court Clerk shall redact the first five numbers of the social security identification number annotated on the document unless such disclosure is authorized by state or federal statutes. [Effective February 1, 2016.]

RULE 25. Civil Process Documents

The General Sessions Clerk's Office will only accept civil warrants or other civil court process in a format authorized and approved by the Civil Clerk. Court approved General Sessions civil documents and forms are available on the internet at www.knoxcounty.org (Law & Justice - General Sessions Court). [Effective March 1, 2009; amended effective February 1, 2016.]

RULE 26. Bail Bondsmen

Motions on behalf of bail bondsmen shall be filed and date-stamped at the counter of the Clerk of Court of General Sessions, Criminal Division. An exact

copy of any filing shall be served on the Office of the District Attorney General. All motions shall be accompanied by a proposed order.

Requests for an extension of time in which to surrender the defendant shall be supported by a notarized affidavit. The supporting affidavit shall state with detail and specificity any and all attempts made by the bail bondsman to apprehend the defendant. Further, the motion shall state whether it is the first application for such relief. Requests for an extension of time shall be filed before the Court enters final judgment on the conditional forfeiture. If the motion for an extension of time is timely filed, the Court will stay entry of final judgment until the motion can be heard.

Motions filed on behalf of bail bondsmen shall be submitted to the judge who ordered the forfeiture. If the District Attorney General explicitly consents to the motion and the proposed order, the Clerk shall forward the motion and proposed order to the appropriate judge for consideration. If the District Attorney General does not explicitly consent to the motion or proposed order, the Clerk shall place the motion on the docket to be heard by the issuing judge on said judge's next appearance in the division of the General Sessions Court from which the forfeiture issued.

Pursuant to Tenn. Sup. Ct. R. 7, Article I, Section 1.01, only properly licensed attorneys are authorized to engage in the practice of law in the General Sessions Court for Knox County. [Adopted effective February 1, 2016.]

RULE 27. Court Appointment List

The Court will maintain a list (Appointment List) of those attorneys approved to accept appointments for the representation of indigent defendants in criminal cases. This list will be maintained by the Judicial Court Administrator. The Appointment List will be revised annually. Once approved to be on the Appointment List, an attorney must indicate their wish to remain on the Appointment List on an annual basis. All attorneys shall provide notice of their desire to remain on the Appointment List by providing written or email notice to the Judicial Court Administrator by December 31st of each calendar year. [Adopted effective Nov. 30, 2016.]

LOCAL RULES OF PRACTICE FOR KNOX COUNTY JUVENILE COURT

Effective December 4, 2015

TABLE OF CONTENTS

RULE.	RULE.
1. ADOPTION OF RULES	14. PRETRIAL MOTIONS
2. SCOPE AND PURPOSE	15. CONDUCT OF TRIALS
3. COURTROOM DECORUM	16. ERROR AND EXCEPTIONS
4. OPENING AND ADJOURNMENT OF COURT	17. ORDERS AND DECREES
5. OFFICE HOURS	18. REHEARING OF MATTERS HEARD BY MAGISTRATE
6. SESSIONS	19. APPEALS
7. ATTORNEYS	20. INFORMAL ADJUSTMENT AND PRE-TRIAL DIVERSIONS
8. PLEADINGS	21. DETENTION
9. INITIATION OF CASES AND INTAKE PROCEEDINGS	22. PATERNITY, LEGITIMATIONS AND GUARDIANSHIPS
10. SCHEDULING OF HEARINGS AND CONTINUANCES	23. MARRIAGE LICENSE WAIVER
11. SERVICE OF PROCESS	24. JUVENILE COURT CO-PARENTING SCHEDULE
12. DISCOVERY	
13. CONFIDENTIAL RECORDS	

RULE 1.

ADOPTION OF RULES

These local rules are adopted by the Knox County Juvenile Court for practice before the Judge of the Juvenile Court and the Court’s Magistrates. [Adopted effective December 4, 2015]

RULE 2.

SCOPE AND PURPOSE

These rules and the Tennessee Rules of Juvenile Procedure shall govern the practice and procedure in the Juvenile Court of Knox County, Tennessee. They are intended to provide for the speedy and just determination of every proceeding, and in juvenile proceedings they shall at all times be enforced and construed beneficially for the remedial purposes embraced in Titles 36 and 37 of the Tennessee Code Annotated. In the event of any conflict, the Tennessee Rules of Juvenile Procedure shall prevail. [Adopted effective December 4, 2015]

RULE 3.

COURTROOM DECORUM

All persons in the courtroom will stand while the Court is being opened and also while the Court is being adjourned. There will be no smoking, chewing of

gum, eating, or drinking in the courtroom. All lawyers and Court attendants will be appropriately dressed while in court attendance. All juveniles and their parents/guardians will be appropriately dressed while in court attendance. All cell phones will be turned off or set to a silent mode prior to entering the Courtroom. No texting will be permitted by counsel or Court personnel unless permission is obtained from the Court. Any electronic device that makes an audible noise during Court proceedings may be confiscated by the Bailiff at the request of the Court and will be returned to the owner at the conclusion of the hearing. No audio or video recordings, photographs or any other methods of recording of the Court proceedings by personal electronic devices will be permitted.

Appropriate dress for juveniles is defined as follows:

- (1) Pants must be worn at the waist. They are not to sag.
- (2) Skirts, dresses, and shorts must be beyond fingertip length.
- (3) Shirts, blouses, and dresses must completely cover the abdomen, back and shoulders.
- (4) Shirts and tops must cover the waistband of the pants, shorts, or skirts with no midriff showing.
- (5) Shirttails are to be tucked into the pants, shorts, or skirt.
- (6) Footwear is required.
- (7) Clothing must not display a) racial or ethnic slurs/symbols, b) vulgar, subversive, or sexually suggestive language or images, or c) products, such as alcohol, tobacco, or illegal drugs, which juveniles may not legally purchase.
- (8) Jewelry in visible facial piercings must be removed.

The Bailiff in attendance upon Court will be charged with the responsibility of requiring compliance with these standards of courtroom conduct and deportment. [Adopted effective December 4, 2015]

RULE 4.

OPENING AND ADJOURNMENT OF COURT

Upon the Judge or Magistrate entering the courtroom preparatory to the formal opening of Court, the Bailiff will call the courtroom to order, directing all in attendance upon the Court to stand will open Court in substantially the manner following:

“This Honorable Juvenile Court of Knox County
is now open for the transaction of business
pursuant to adjournment, the Honorable
_____ presiding.”

Thereupon the Judge or Magistrate will take his seat upon the bench and those in the courtroom will be seated. Upon the Court instructing the Bailiff to adjourn Court for the day, the Bailiff will direct all in attendance upon the Court to stand, as will the Judge, and will adjourn Court in substantially the manner following:

“This Honorable Court now stands adjourned until tomorrow
morning at ____ o’clock.” (or until a day certain.) [Adopted effective
December 4, 2015]

RULE 5.
OFFICE HOURS

The Office of the Clerk of Court shall be open for the regular transaction of business from 8:00 a.m. until 4:30 p.m. except on non-judicial days. [Adopted effective December 4, 2015]

RULE 6.
SESSIONS

Subject to such variations as the presiding Judge may find necessary or convenient, there will be a session of Court daily except non-judicial days. The regularly scheduled Court dockets shall begin at 9:00 a.m. in the morning and at 1:30 p.m. in the afternoon. Hearings may be scheduled outside of the regularly scheduled docket times at the discretion of the Judge or Magistrate presiding over the matter. There will be a one-hour recess for lunch as directed by the presiding Judge or Magistrate. Parties and attorneys will not be excused until released by the Court. Attorneys are strongly urged to discuss their pending matters prior to the beginning of the court session. Parties are expected to be prepared to proceed promptly at the beginning of the morning and afternoon sessions.

Attorneys or parties to proceedings scheduled before the Court shall notify the Court as soon as possible if there is an anticipated delay in the arrival of the attorney or party. The attorney or party shall notify the Information Desk at 215-6414 as soon as possible and identify the matter in which the attorney or party is involved and the estimated time of arrival. If an attorney or party has an emergency that will necessitate their absence at the scheduled Court proceeding, the attorney or party shall notify the Information Desk at 215-6414 as soon as possible and identify the matter in which the attorney or party is involved. The Information Desk shall ensure that the Court's Probation Officer or Family Service Officer is informed of the delay or absence of an attorney or party to a scheduled matter immediately and the Probation Officer or Family Service Officer shall notify the Judge or Magistrate presiding over the scheduled proceeding and other attorneys and parties to the proceeding. [Adopted effective December 4, 2015]

RULE 7.
ATTORNEYS

All attorneys licensed to practice law in Tennessee shall be allowed to appear in any matter coming before the Court. It is the responsibility of the attorney representing the party to bring it to the Court's attention as soon as practical to be made a part of Court record. In accordance to Rule 19 of Tennessee Rules of Juvenile Procedure, an attorney of record who wishes to terminate their representation may do so only by permission of the Court. [Adopted effective December 4, 2015]

RULE 8.**PLEADINGS**

All petitions, answers, orders, briefs, or other legal documents filed or presented to this Court shall be typewritten on forms provided by the Court or typewritten on letter sized (8½" × 11") paper, opaque and unglazed. Two copies of every pleading shall be filed in all causes, one of the same to be marked "duplicate." Such pleadings must be filed with the Clerk of the Court, and it shall be the duty of the Clerk of Court to indicate on each copy the date and time of filing. [Adopted effective December 4, 2015]

RULE 9.**INITIATION OF CASES AND INTAKE PROCEEDINGS**

Intake proceedings shall follow the rules and regulations set forth in the Intake Process Manual on file in the Court Administrator's office. The manual shall be made available to all parties and their representatives or counsel and has been approved and adopted by the Court and is incorporated herein by reference. [Adopted effective December 4, 2015]

RULE 10.**SCHEDULING OF HEARINGS AND CONTINUANCES**

All Delinquent cases shall be scheduled by the court at Detention Hearings or Initial Appearances. Hearings shall be set as soon as possible with the concurrence of the child's probation officer. Initial Appearances shall be scheduled for all juveniles charged with delinquent or unruly offenses on Tuesday afternoons or Friday mornings unless the juvenile had a Detention Hearing. The juvenile shall be informed of his/her rights and served with any pending petitions.

All Family Services cases shall be scheduled by the Family Service Officer in a timely manner in accordance with docket limitations.

All Motions for Continuance shall be made as soon as practical before the trial date and must be approved by the Court. Agreed upon continuances shall be by Order signed by counsel for all parties and shall specify a new trial date, said date to be in accordance with the docket clerk. It is the party's responsibility requesting the continuance to notify all parties and witnesses subpoenaed of the continuance and the reset Court date. [Adopted effective December 4, 2015]

RULE 11.**SERVICE OF PROCESS**

All subpoenas shall be typed or printed on forms by the Court and submitted to the Clerk of Court, as diligently as possible, but not later than five (5) days, excluding non-judicial days, before the scheduled date of trial. A party to a proceeding who is not represented by an attorney may simply furnish the Clerk of the Court a list of the names and addresses of the witnesses to be subpoenaed, and it shall be the responsibility of the Clerk of the Court to cause

subpoenas to be issued in accordance with this rule. [Adopted effective December 4, 2015]

RULE 12.

DISCOVERY

The Court shall allow limited discovery within the framework of the rules upon written Motion by each party by timely filing and upon good cause shown. Any party may object to discovery by filing a written response promptly after the filing of the Motion for discovery. Failure to respond to the Motion for Discovery shall be considered consent to such Motion. The party, prior to filing a Motion for Discovery, shall exhaust all efforts to come to an agreement for discovery and shall have so certified to the Court in Motion of Discovery.

Discovery may be allowed under such terms and conditions as set forth in the Tennessee Rules of Juvenile Procedure (Rule 25). Costs of discovery shall be upon the party making Motion and the result of the discovery shall be filed with the Court by 4:30 p.m. two (2) days prior to the hearing in the matter. These rules of discovery shall not pertain to confidential information as set forth by statute. [Adopted effective December 4, 2015]

RULE 13.

CONFIDENTIAL RECORDS

All records submitted or filed with the Knox County Juvenile Court shall be confidential records (which includes, but is not limited to, medical records or evaluations, mental health records or evaluations, substance abuse assessment/treatment records, drug screen results, reports from the Tennessee Department of Children's Services or other agencies, CASA reports and probation reports) and shall not be disclosed or re-released to anyone for any purpose other than the proceedings currently before this Court without further authorization from the Judge of the Knox County Juvenile Court. At the conclusion of the proceedings, all confidential records in the possession of the parties or their legal counsel shall be returned to the Court's case manager.

All Orders submitted to the Court for entry shall contain the following language:

"That all records provided to Knox County Juvenile Court during these proceedings shall be maintained by the parties and their counsel as confidential records and shall not be disclosed or re-released to anyone for any purpose other than the proceedings currently before this Court without further authorization from the Judge of the Knox County Juvenile Court; and that at the conclusion of the proceedings, all copies of the reports shall be returned to the Court's case manager." [Adopted effective December 4, 2015]

RULE 14.**PRETRIAL MOTIONS**

All pretrial Motions shall be in writing and must be filed with the Court and served on opposing counsel or party by 4:30 p.m., five (5) days before the hearing in the matter. In cases involving more than one party or involving Guardians ad Litem, service shall be had on those persons in the same deadline. [Adopted effective December 4, 2015]

RULE 15.**CONDUCT OF TRIALS**

Proceedings in the Court shall be closed hearings except those cases where the public is allowed by statute. In the discretion of the Court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted. In juvenile proceedings a parent or guardian must be present at every adjudicatory hearing unless excused by the Court in writing or on the record. The Court may appoint a Guardian ad Litem to act in behalf of a child when it appears to the Court that the interest of the child so require. [Adopted effective December 4, 2015]

RULE 16.**ERROR AND EXCEPTIONS**

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. Exceptions to the rulings of the Court are unnecessary. If a party makes no objection to a ruling or order, absence of an objection does not in itself prejudice him thereafter. [Adopted effective December 4, 2015]

RULE 17.**ORDERS AND DECREES**

Orders and Decrees in Family Services cases shall be prepared by the attorneys, as directed by the Court. The attorney preparing the order shall submit the order to opposing counsel and the Court for approval no later than seven (7) days after the hearing. It shall be signed by all parties or their attorneys or certified pursuant to Rule 58.02 TRCP.

Orders and Decrees in delinquent and unruly cases shall be prepared by the Clerk of Court unless otherwise directed by the Judge or Magistrate. [Adopted effective December 4, 2015]

RULE 18.**REHEARING OF MATTERS HEARD BY MAGISTRATE**

The Judge may, on his own Motion, order a rehearing of any matter heard by a Magistrate. Any party may, within five (5) days after the date of the hearing

before the Magistrate, excluding non-judicial days, file request for and be allowed a hearing before the presiding Judge. Provided, however, that a rehearing will not be allowed in any delinquency or unruly cases in which the Magistrate recommends dismissal after hearing on the merits. The recommendation of the Magistrate, in all matters before the Court, shall be the decree of the Court pending a rehearing. [Adopted effective December 4, 2015]

RULE 19.

APPEALS

An appeal from the Court's decision in a delinquency case may be perfected by filing a notice of appeal within ten (10) days, excluding non-judicial days, of the final order in the Juvenile Court. The notice of appeal shall also be filed in the Criminal Court reflecting the appeal of the Juvenile Court final order. Appeals on dependent and neglect cases and unruly cases shall be made to the Circuit Court. Appeals of Termination of Parental Rights cases shall be made to the Court of Appeals. Appeals of matters heard in Juvenile Court pursuant to Title 36 shall be made to the Court of Appeals. If a rehearing of a matter heard by a Magistrate is not requested or provided pursuant to TCA § 37-1-107(e), the date of the expiration of the time within which to request rehearing shall be the date of disposition for appeal purposes, allowing fifteen (15) days for appeal. An appeal shall not operate as a stay, and the order of this Court shall remain in effect until or unless the appeals court enters an order to the contrary. [Adopted effective December 4, 2015]

RULE 20.

INFORMAL ADJUSTMENT AND PRETRIAL DIVERSIONS

Informal Adjustment

The Court shall administer informal adjustments through the First Offender Program in accordance with Rule 14 of the Tennessee Rules of Juvenile Procedure. The designated court officer shall determine which cases are appropriate for informal adjustment and may consult with the District Attorney's Office for guidance.

Pretrial Diversion

The Court shall administer pretrial diversions in accordance with Rule 23 of the Tennessee Rules of Juvenile Procedure. The procedures set forth in this rule essentially allow for a process similar to informal adjustment, with no official finding as to guilt, except that the court in the person of the Judge or Magistrate is involved in that there must be court approval of any agreement. The court will notify the District Attorney General on more serious cases. (See Committee Comment Rule 23 of the Tennessee Rules of Juvenile Procedure.) [Adopted effective December 4, 2015]

RULE 21.

DETENTION

Rules for the pre-trial and post-trial detention of delinquent offenders are governed by TCA § 37-1-114 and the Richard L. Bean Regional Juvenile

Detention Center Administrative Manual. Those rules outlined in the Manual regarding the rights of the juvenile, his/her parents, guardian, and representatives as to intervening, visiting, questioning, and other need for access to the child in detention have been approved and adopted by the Court and are incorporated herein by reference. [Adopted effective December 4, 2015]

RULE 22.

PATERNITY, LEGITIMATIONS AND GUARDIANSHIPS

Paternity and legitimation cases shall comply with TCA § 36-2-301 et. seq. Parents shall be co-petitioners in guardianship cases or shall be served with process prior to a hearing in this matter. [Adopted effective December 4, 2015]

RULE 23.

MARRIAGE LICENSE WAIVER

The Court may grant judicial consent to the removal of the time and/or age requirement of the marriage license pursuant to T.C.A. § 36-3-107. Before approval is granted, the following conditions shall be met by the parties:

The minor party shall be over fifteen (15) years of age and have a copy of his or her birth certificate and a doctor's statement of pregnancy for a female or her infant child's birth certificate. The adult must have proof of age by valid driver's license, birth certificate or voter's registration card.

If the minor's parents are consenting, their presence is necessary and if divorced, the custodial parent's presence and proof of custody is necessary. If the custodial parent objects to the marriage, a three (3) day notice will be given such parent to appear before the Court to show cause why said waiver should not be allowed. If the child is in the custody of a state agency, the child's counselor and said state agency shall be given notice and an opportunity to express their position to the Court.

All requests for a marriage license waiver shall be made to the dependency and neglect Family Service Officers. It is the sole discretion of the Court to approve or deny the waiver. [Adopted effective December 4, 2015]

RULE 24.

JUVENILE COURT CO-PARENTING SCHEDULE

The Tennessee Child Support Guidelines provide that visitation between sixty-nine (69) and ninety-two (92) days requires no adjustment in the support amount. Standard visitation for the Magistrates' courts shall be eighty (80) days per year, pursuant to the Guidelines, 1240-2-4-.04 (7) (a). [Adopted effective December 4, 2015]

LOCAL RULES OF PRACTICE FOR KNOX COUNTY JUVENILE COURT, CHILD SUPPORT DIVISION

Effective July 1, 2015

RULE.

1. ADOPTION OF RULES.
2. COURT SESSIONS.
3. CONTINUANCES.
4. MAGISTRATES' JURISDICTION.
5. CO-PARENTING SCHEDULE.

RULE.

6. HEALTH INSURANCE, NON-INSURED EXPENSE.
7. APPEALS.
8. WAIVER AND MODIFICATION OF RULES.

Rule 1. ADOPTION OF RULES.

These local rules are adopted by the Knox County Juvenile Court for practice before the court's Magistrates, Child Support Division. [Adopted effective July 1, 2015]

Rule 2. COURT SESSIONS.

Court opens at 9:00 a.m. and adjourns upon the completion of all matters before the court. It is recommended that attorneys dealing with Title IV-D cases appear prior to 9:00 a.m., as pre-trial conference with the State's attorney expedites the resolution of issues. [Adopted effective July 1, 2015]

Rule 3. CONTINUANCES.

The time restrictions of T.C.A. §§ 36-5-402 and 36-5-405 are applicable to virtually all hearings before the Juvenile Court Magistrates. Consequently, cases will be continued only upon the Magistrate's approval, or in Title IV-D cases, with the approval of the attorney for the State of Tennessee. Agreed continuances may be granted informally by the Magistrate. Hearing shall be required for all disputed continuance requests. [Adopted effective July 1, 2015]

Rule 4. MAGISTRATES' JURISDICTION.

Magistrates in the child support division determine child support issues, including but not limited to support establishment, modification, enforcement and termination. Parentage establishment is required in many cases preliminarily to support establishment. Routine examination of the existing co-parenting situation is required for any support review. However, the Magistrate may not address contested custody and visitation issues, which shall be addressed by the filing of a petition with the Family Services Unit of the Knox County Juvenile Court. [Adopted effective July 1, 2015]

Rule 5. CO-PARENTING SCHEDULE.

The Tennessee Child Support Guidelines provide that visitation between sixty-nine (69) and ninety-two (92) days requires no adjustment in the support amount. Standard visitation for the Magistrates' courts shall be eighty (80)

days per year, pursuant to the Guidelines, 1240-2-4-.04 (7)(a). [Adopted effective July 1, 2015]

Rule 6. HEALTH INSURANCE, NON-INSURED EXPENSE.

Liability for health insurance for the child(ren) shall be established in all cases, pursuant to the Tennessee Child Support Guidelines. The parent who pays a non-covered medical expense for the child's treatment shall provide the other party with written proof of this expense within thirty (30) days of the payment. The parent who receives such notice shall reimburse the required amount within thirty (30) days of receipt. Failure to adhere to this rule may result in greater liability for the offending parent. [Adopted effective July 1, 2015]

Rule 7. APPEALS.

A request for rehearing of the Magistrate's decision must be filed with the court clerk within five (5) days of the entry of the order. Upon filing, hearing is set before the Juvenile Court Judge. The Magistrate's order is effective and binding upon the parties until the appeal is addressed by the Judge. Appeals of the Judge's decision shall be made to the Court of Appeals. [Adopted effective July 1, 2015]

Rule 8. WAIVER AND MODIFICATION OF RULES.

Any of these rules may be waived or modified by any of the Magistrates if justice so requires. [Adopted effective July 1, 2015]

Index to Local Rules of Knox County

A

- ABROGATION OF FORMER RULES,**
Knox GenSess 1.
- ABSTENTION FROM RULES,** Knox Crim X.
- ADJOURNMENT OF COURT,** Knox Juv 4.
- ADOPTION OF RULES,** Knox Chanc 1,
Knox Cir IV Rule 1, Knox Juv 1.
- Child support division of juvenile court,**
Knox Juv CSD 1.
- ALIMONY.**
Pendente lite support, Knox Cir IV Rule 13.
- APPEALS.**
Child support division of juvenile court,
Knox Juv CSD 7.
- Dismissal.**
Failure of parties to appear, Knox Cir I to III Rule VII.
- Notice of appeal,** Knox Juv 19.
- Procedure,** Knox Juv 19.
- APPOINTMENT LIST,** Knox GenSess 27.
- ARRAIGNMENT.**
- Audio-visual interactive technology.**
Waiver of defendant's physical appearance,
Knox GenSess 16.
- General provisions,** Knox Crim I.
- ASSIGNMENT OF CASES,** Knox Cir I to III Rule I.
- ATTIRE.**
Juvenile court.
Requirements for attire of juveniles, Knox Juv 3.
- ATTORNEYS AT LAW.**
Code of professional conduct.
Applicability in general sessions court,
Knox GenSess 2.
- Court appointment list,** Knox GenSess 27.
- Fees.**
Requests for fees, Knox Cir IV Rule 19.
- Qualifications,** Knox GenSess 6, Knox Juv 7.
- Withdrawal of counsel,** Knox Juv 7.
- AUDIO-VISUAL INTERACTIVE TECHNOLOGY.**
Waiver of physical appearance.
Criminal defendants, Knox GenSess 16.
- AUTHORITY FOR RULES.**
Sixth district, uniform local rules of practice, Knox 6th Dist Local Practice 1.
- AUTHORITY OF FORMER RULES,** Knox GenSess 1.

B

- BAD CHECK PROSECUTIONS,** Knox GenSess 20.
- BAIL BONDSMEN.**
Motions on behalf of bail bondsmen, Knox GenSess 26.
- BRIEFS.**
Filing, Knox Crim V.
- BROADCASTING.**
Court proceedings, Knox GenSess 21.

C

- CASE MANAGEMENT,** Knox Chanc 24.
- CHAMBERS AND ADJACENT AREAS SECURITY,** Knox GenSess 8.
- CHILD CUSTODY.**
Parenting plans, Knox Cir IV Rule 15.
- Pendente lite co-parenting,** Knox Cir IV Rule 26.
- Pleadings or motions.**
Contents, Knox Cir IV Rule 4.
- Visitation.**
Co-parenting time.
Child support division of juvenile court.
Schedule, Knox Juv CSD 5.
Juvenile court co-parenting schedule,
Knox Juv 24.
No agreement, Knox Cir IV Rule 17.
- CHILD SUPPORT.**
Arrearages.
Graphic exhibits, Knox Cir IV Rule 21.
- Juvenile court.**
Child support division of juvenile court,
Knox Juv CSD 1 to Knox Juv CSD 8.
- Pendente lite support,** Knox Cir IV Rule 13.
- CLERK AND MASTER.**
Reports, Knox Chanc 19.
- CLERK OF COURT.**
Custody of papers and records, Knox GenSess 3.
- Dockets.**
Trial dockets, Knox Cir I to III Rule IX.
- Files of court.**
Custody and control by clerk, Knox Cir I to III Rule III.
- Legal advice by court personnel,** Knox Chanc 23.
- Mediation.**
Notification to parties of availability, Knox GenSess 11.

CLERK OF COURT —Cont'd**Office hours**, Knox Juv 5.**Service of process**, Knox GenSess 18.**Setting cases for trial.**

Clerk or judicial secretary to set.

Sixth district, uniform local rules of practice, Knox 6th Dist Local Practice 2.

CODE OF PROFESSIONAL CONDUCT.**Adoption**, Knox GenSess 2.**COMPLIANCE DOCUMENT**, Knox GenSess 15.**CONFIDENTIALITY.****Juvenile court.**

Records, Knox Juv 13.

CONTINUANCES, Knox Chanc 7, Knox Cir IV Rule 7, Knox Crim II.**Chancery court provisions**, Knox Chanc 7.**Child support division of juvenile court**, Knox Juv CSD 3.**Order or leave of court**, Knox 6th Dist Local Practice 3.**Trial**, Knox Juv 10.

Civil cases, Knox GenSess 10.

Criminal cases, Knox GenSess 14.

COSTS.**Court costs**, Knox Chanc 10.**Expungement of records.**

Orders.

Payment of costs required before expungement occurs, Knox GenSess 19.

Taxing of costs, Knox Cir IV Rule 10.**COURT APPOINTMENT LIST**, Knox GenSess 27.**COURT FILES.****Control**, Knox Chanc 3, Knox Cir I to Knox Cir III, Knox GenSess 3.**Removal**, Knox GenSess 3.**Withdrawal**, Knox Chanc 3.**COURT PERSONNEL.****Legal advice by non-attorney court personnel**, Knox GenSess 22.**COURT REPORTERS.****Form for filling out and filing**, Knox Cir I to III Rule X.**COURTROOM DECORUM**, Knox Juv 3.**Adjournment of court**, Knox Juv 4.**Approaching the bench**, Knox Crim VIII. **Attire.**

Proper attire, Knox GenSess 5.

Behavior of defendant, Knox GenSess 5, Knox GenSess 13.**Broadcasting.**

Court proceedings, Knox GenSess 21.

Cell phones, Knox GenSess 5.Contact information for attorneys attending multiple courts, Knox Crim VIII. **Juvenile court**, Knox Juv 3.**COURTROOM DECORUM —Cont'd****Cell phones —Cont'd**

Texting restrictions, Knox Crim VIII.

Turned off or silenced, Knox Crim VIII.

Defendant to be seated at defense table, Knox GenSess 5.**Dockets.**

Adding cases to docket, Knox Crim VIII.

Food, drink and gum.

Barred, Knox GenSess 5.

Opening of court, Knox Cir I to III Rule VIII, Knox Crim VIII, Knox GenSess 5.**Pagers**, Knox GenSess 5.**Proper attire**, Knox Crim VII, Knox GenSess 5.**Reading materials.**

Barred, Knox GenSess 5.

Recording devices.

Prohibition, Knox GenSess 5.

Seating arrangements, Knox Cir I to III Rule VIII.**Space within the bar**, Knox Crim VII, Knox GenSess 5.**Standing**, Knox Cir I to III Rule VIII.**COURTROOM SECURITY**, Knox GenSess 7.**COURT SESSIONS**, Knox Cir IV Rule 2.**General sessions**, Knox GenSess 4.**CRITERION DAY**, Knox Cir IV Rule 20.**D****DECEDENTS' ESTATES.****Filing in probate division**, Knox Chanc 17.**Hearings**, Knox Chanc 18.**DEPOSITIONS.****Limitations on filing of discovery material**, Knox Chanc 8.**DETENTION**, Knox Juv 21.**DISCOVERY.****Criminal cases**, Knox Crim II.**Documents not to be filed**, Knox Cir IV Rule 8.**Interrogatories.**

See INTERROGATORIES.

Limitations, Knox Juv 12.

Filing of discovery material, Knox Chanc 8.

Motions.

Compelling discovery, Knox Chanc 9, Knox Cir I to III Rule V, Knox Cir IV Rule 9.

DIVORCE.**Financial records.**

Preservation of financial records, Knox Cir IV Rule 24.

Hearings.

Time, Knox Chanc 13.

Personal property items.

Orders, Knox Cir IV Rule 27.

DOCKETS.**Civil case dockets**, Knox GenSess 9.

DOCKETS —Cont'd

- Compliance docket**, Knox GenSess 15.
- Court sessions**, Knox GenSess 4.
- Trial dockets**, Knox Cir I to III Rule IX.

DOCUMENTS OF THE COURT.

- Custody, control and safekeeping**, Knox GenSess 3.

DOMESTIC RELATIONS.**Chancery court.**

- Provisions applicable in chancery court, Knox Chanc 13.

Divorces.

- Hearings.
- Time, Knox Chanc 13.

Financial statements, Knox Chanc 13.**Injunctions.**

- Temporary injunctions, Knox Chanc 13.

DOMESTIC VIOLENCE.

- Intervention programs**, Knox Cir IV Rule 30.

DORMANT CASES.

- Case management**, Knox Chanc 24.

E

- EFFECTIVE DATE OF RULES**, Knox Chanc 1, Knox Crim IX.

EMPLOYEES OF COURT.

- Legal advice by non-attorney court personnel**, Knox GenSess 22.

ERRORS.

- Disregarding**, Knox Juv 16.

EXCEPTIONS TO RULINGS.

- Unnecessary**, Knox Juv 16.

EXPUNGEMENT OF RECORDS.

- Orders.**
- Requirements, Knox GenSess 19.

F**FACSIMILE COMMUNICATIONS EQUIPMENT.**

- Physical appearance of criminal defendant.**

- Waiver, Knox GenSess 16.

FEES.

- Application for court approval**, Knox Chanc 15.

Attorneys' fees.

- Requests for fees, Knox Cir IV Rule 19.

Expungement of records.

- Orders.**
- Filing fees, Knox GenSess 19.

FINANCIAL RECORDS.

- Preservation of financial records**, Knox Cir IV Rule 24.

FIRST OFFENSES.

- Informal adjustments.**
- Juvenile cases, Knox Juv 20.

FIRST OFFENSES —Cont'd

- Judicial diversions**, Knox Juv 20.

G**GARNISHMENT.**

- Dismissal**, Knox GenSess 12.

Execution.

- Issuance, Knox GenSess 12.

GUARDIAN AD LITEM.

- Appointment**, Knox Chanc 16.

- Chancery court provisions, Knox Chanc 16.

GUARDIANS.**Copetitioners.**

- Service of process, Knox Juv 22.

H**HEALTH INSURANCE.**

- Proof of medical coverage**, Knox Cir IV Rule 16.

HEARINGS.**Child support.**

- See CHILD SUPPORT.

Conduct, Knox Juv 15.**Decedents' estates**, Knox Chanc 18.**Domestic relations.**

- Divorce hearings.
- Time, Knox Chanc 13.

Motions.

- Setting of date, Knox Chanc 6.

Pendente lite hearings.

- Setting of date, Knox Chanc 6.

Probate, Knox Chanc 18.**Rehearings.**

- Matters heard by magistrate, Knox Juv 18.

Schedule, Knox Juv 10.**I****INDIGENT CRIMINAL DEFENDANTS.****Attorneys at law.**

- Court appointment list, Knox GenSess 27.

INDIGENT FUND ORDERS.

- Requirements**, Knox GenSess 19.

INFORMAL ADJUSTMENTS.

- Juvenile cases**, Knox Juv 20.

INJUNCTIONS.**Domestic relations.**

- Temporary injunctions, Knox Chanc 13.

INSURANCE.**Medical insurance.**

- Child support division of juvenile court.

- Medical expenses not covered by insurance, Knox Juv CSD 6.

- Responsibility for health coverage, Knox Juv CSD 6.

- Proof of medical coverage, Knox Cir IV Rule 16.

INTAKE PROCEEDINGS.

Initiation, Knox Juv 9.

INTERROGATORIES.**Limitations on and request to admit,**
Knox Chanc 8.**Number of questions,** Knox Cir IV Rule 8.
Responses.

Format, Knox Cir IV Rule 8.

INTERVENTION.**Domestic violence.**Intervention programs, Knox Cir IV Rule
30.**J****JUDGMENTS.****Entry of judgment,** Knox Cir IV Rule 11.
Notice, Knox Chanc 12, Knox Cir IV Rule
12.Chancery court provisions, Knox Chanc
12.Preparation of judgment, Knox Chanc 11.
Time, Knox Chanc 11.**Preparation,** Knox Crim V.Prevailing party to prepare, Knox 6th Dist
Local Practice 6, Knox Cir I to III Rule
XI.**JUDICIAL MAGISTRATES,** Knox GenSess
20.**Criminal warrants.**Probable cause lacking.
Review of decision declining issuance,
Knox GenSess 23.**JUDICIAL SECRETARY.****Setting cases for trial.**Clerk or judicial secretary to set.
Sixth district, uniform local rules of
practice, Knox 6th Dist Local
Practice 2.**JURIES.****Criminal trials.**

Preparation for trial, Knox Crim III.

JUVENILE COURT.**Adjournment of court,** Knox Juv 4.**Adoption of rules,** Knox Juv 1.**Appeals,** Knox Juv 19.

Child support division, Knox Juv CSD 7.

Attire.Requirements for attire of juveniles, Knox
Juv 3.**Attorneys at law.**Qualifications, Knox Juv 7.
Withdrawal of counsel, Knox Juv 7.**Cell phones.**

Courtroom decorum, Knox Juv 3.

Child support division.Adoption of rules, Knox Juv CSD 1.
Appeals, Knox Juv CSD 7.
Continuances, Knox Juv CSD 3.
Health insurance.
Medical expenses not covered by
insurance, Knox Juv CSD 6.**JUVENILE COURT —Cont'd****Child support division —Cont'd**Health insurance —Cont'd
Responsibility for health coverage, Knox
Juv CSD 6.Jurisdiction of magistrate, Knox Juv CSD
4.

Modification of rules, Knox Juv CSD 8.

Sessions of court, Knox Juv CSD 2.

Visitation.

Co-parenting schedule, Knox Juv CSD 5.

Waiver of rules, Knox Juv CSD 8.

Clerk of court.

Office hours, Knox Juv 5.

Confidentiality of records, Knox Juv 13.**Continuances,** Knox Juv 10.

Child support division, Knox Juv CSD 3.

Co-parenting schedule, Knox Juv 24.

Child support division, Knox Juv CSD 5.

Courtroom decorum, Knox Juv 3.**Delay in arrival of attorney or party.**

Notice, Knox Juv 6.

Delinquent cases.

Orders and decrees.

Preparation, Knox Juv 17.

Scheduling, Knox Juv 10.

Detention, Knox Juv 21.**Discovery,** Knox Juv 12.**Errors.**Disregarding nonsubstantive errors, Knox
Juv 16.**Exceptions to rulings.**

Not required, Knox Juv 16.

Family services.

Orders and decrees.

Preparation, Knox Juv 17.

Scheduling family services cases, Knox Juv
10.**Guardians.**

Copectioners.

Service of process, Knox Juv 22.

Hearings.

Conduct of proceedings, Knox Juv 15.

Schedule, Knox Juv 10.

Informal adjustments.

First offender program, Knox Juv 20.

Intake proceedings.

Initiation, Knox Juv 9.

Legitimations, Knox Juv 22.**Marriage.**

Licenses.

Waiver of time or age requirements, Knox
Juv 23.**Opening of court,** Knox Juv 4.**Paternity,** Knox Juv 22.**Pleadings.**

Form, Knox Juv 8.

Pretrial diversions, Knox Juv 20.**Pretrial motions,** Knox Juv 14.**Purpose of rules,** Knox Juv 2.**Rehearings.**

Matters heard by magistrate, Knox Juv 18.

Scope of court, Knox Juv 2.**Sessions of court,** Knox Juv 6.

JUVENILE COURT —Cont'd
Subpoenas, Knox Juv 11.
Withdrawal of counsel, Knox Juv 7.

L

**LEGAL ADVICE BY COURT
PERSONNEL**, Knox Chanc 23.

LEGITIMATIONS, Knox Juv 22.

M

MAGISTRATES.

Child support division of juvenile court.
Generally, Knox Juv CSD 1 to Knox Juv
CSD 8.
Jurisdiction of magistrate, Knox Juv CSD
4.

Rehearings.

Matters heard by magistrate, Knox Juv 18.

MARRIAGE.

Licenses.

Waiver of time or age requirements, Knox
Juv 23.

MEDIATION, Knox GenSess 11.

MODIFICATION OF RULES, Knox Crim X.
Child support division of juvenile court,
Knox Juv CSD 8.

MOTIONS.

Continuances, Knox Crim II, Knox Juv 10.
Discovery.

Compelling discovery, Knox Chanc 9, Knox
Cir I to III Rule V, Knox Cir IV Rule 9.

Hearings.

Setting of date, Knox Chanc 6.

Installment payments on judgments,
Knox GenSess 9.

Judgments prepared by prevailing party,
Knox Cir I to III Rule XI1.

Orders prepared by prevailing party,
Knox Cir I to III Rule XI1.

Pretrial motions, Knox Crim II, Knox Juv
14.

Deciding, Knox 6th Dist Local Practice 4.

Rulings on motions, Knox Cir I to III Rule
VI.

**Setting cases, motions and pretrial
hearings**, Knox Cir IV Rule 6.

Speedy trial, Knox Crim II.

Stay executions by garnishment, Knox
GenSess 9.

N

NEGOTIATED DISPOSITIONS, Knox
GenSess 11.

NEWS MEDIA.

Coverage of proceedings, Knox Cir I to
Knox Cir III, Knox Crim VI, Knox
GenSess 21.

NOTICE.

Judgments.

Entry of judgment, Knox Chanc 12.

Sentencing.

Contents, Knox Crim VII.

O

OPENING OF COURT, Knox Juv 4.

ORDERS.

Entry of orders, Knox Cir IV Rule 11.

Preparation, Knox Chanc 11.

Time, Knox Chanc 11.

Expungement orders.

Contents, Knox GenSess 19.

Indigent fund orders.

Contents, Knox GenSess 19.

Preparation, Knox Crim V, Knox Juv 17.

Prevailing party to prepare, Knox 6th Dist
Local Practice 6, Knox Cir I to III Rule
XI1.

Protection orders.

Electronic filing of petitions for orders,
Knox Cir IV Rule 31.

Reconciliation, Knox Cir IV Rule 18.

P

PARENT EDUCATION SEMINARS.

Domestic relations cases, Knox Chanc 13.

PARENTING PLANS, Knox Cir IV Rule 15.

Domestic relations cases, Knox Chanc 13.

PARTIES.

Pro se representation, Knox GenSess 6.

PATERNITY, Knox Juv 22.

PENDENTE LITE CO-PARENTING, Knox
Cir IV Rule 26.

PENDENTE LITE SUPPORT, Knox Cir IV
Rule 13.

Arrearages in support.

Graphic exhibits, Knox Cir IV Rule 21.

PLEADINGS.

Contents, Knox Cir IV Rule 4.

Filing, Knox Crim V.

Form, Knox Juv 8.

PLEAS.

Bargaining.

Deadlines on plea agreements, Knox 6th
Dist Local Practice 5.

PRETRIAL CONFERENCES.

Criminal trials, Knox Crim II.

PRETRIAL DIVERSIONS, Knox Juv 20.

PRETRIAL HEARINGS.

**Setting cases, motions and pretrial
hearings**, Knox Cir IV Rule 6.

PRETRIAL MOTIONS, Knox Crim II, Knox
Juv 14.

Deciding, Knox 6th Dist Local Practice 4.

PROBATE.

Filing in probate division, Knox Chanc 17.
Hearings, Knox Chanc 18.

PROPERTY.**Sale of real property.**

Judicial sales, Knox Chanc 21.
 Corporate purchases, Knox Chanc 22.
 Title opinions, Knox Chanc 20.

PRO SE REPRESENTATION, Knox
 GenSess 6.

PROTECTION ORDERS.

Electronic filing of petitions for orders,
 Knox Cir IV Rule 31.

**PUBLICATION IN LIEU OF PERSONAL
 SERVICE**, Knox Cir IV Rule 22.

PURPOSE OF RULES, Knox Juv 2.

R**RECONCILIATION.**

Orders of reconciliation, Knox Chanc 13,
 Knox Cir IV Rule 18.
 Chancery court provisions, Knox Chanc 13.

RECORDS OF THE COURT.

Custody, control and safekeeping, Knox
 Chanc 3, Knox Cir IV Rule 3, Knox
 GenSess 3.
 Chancery court provisions, Knox Chanc 3.

REFEREES.**Child support.**

Hearings.
 See CHILD SUPPORT.

REPORTS.

Clerk and master, Knox Chanc 19.

REQUESTS TO ADMIT.

Limitations on, Knox Chanc 8.

REVIEW DOCKET.

Compliance review docket, Knox GenSess
 15.

S

SCOPE OF RULES, Knox Juv 2.

SECURITY.

Chambers and adjacent areas, Knox
 GenSess 8.

Courtrooms, Knox GenSess 7.

SENTENCING.**Enhancement or mitigation factors.**

Statement filed upon finding of guilt, Knox
 Crim VII.

Notice.

Contents, Knox Crim VII.

SEPARATE AND MARITAL PROPERTY.

Pretrial stipulations, Knox Cir IV Rule 14.

SERVICE OF PROCESS.

**Contact information in complaint or
 petition**, Knox Cir IV Rule 4.

Contents of process, Knox Chanc 4, Knox
 Cir I to III Rule II.

General Sessions court, Knox GenSess 18.

Mail service, Knox Chanc 4.

Publication in lieu of personal service,
 Knox Cir IV Rule 22.

Time, Knox GenSess 9.

SESSIONS OF COURT, Knox Chanc 2,
 Knox Cir IV Rule 2, Knox GenSess 4,
 Knox Juv 6.

Child support division of juvenile court,
 Knox Juv CSD 2.

**SETTING CASES, MOTIONS AND
 PRETRIAL HEARINGS**, Knox Cir IV
 Rule 6.

SETTLEMENTS.

Mediation, Knox GenSess 11.

**Workers' compensation claims, infants
 and incompetents**, Knox Chanc 14.

Chancery court provisions, Knox Chanc 14.

**SKYPE OR OTHER AUDIO-VISUAL
 INTERACTIVE TECHNOLOGY.****Magistrates.**

Prisoner initial appearances via Skype,
 Knox GenSess 20.

**Waiver of defendant's physical
 appearance**, Knox GenSess 16.

SMOKING.

**Second hand smoke endangering
 children.**

Parents' duties to children, Knox Cir IV
 Rule 25.

SOCIAL SECURITY NUMBERS.

When required on process or documents,
 Knox GenSess 24.

STIPULATIONS.**Pretrial stipulations.**

Separate and marital property, Knox Cir IV
 Rule 14.

SUBPOENAS.

Contents, Knox Cir IV Rule 5.

Issuance, Knox GenSess 17.

Requests.

Contents, Knox Chanc 5.

Time for request, Knox Cir I to III Rule II.

Time.

Filing of request, Knox Chanc 5.

Issuance, Knox Juv 11.

SUMMONS.

Preparation, Knox Cir IV Rule 4.

SUPPORT AND MAINTENANCE.**Arrearages in support.**

Graphic exhibits, Knox Cir IV Rule 21.

Pendente lite spousal support, Knox Cir
 IV Rule 13.

T**TIME.****Domestic relations.**

Divorce hearings, Knox Chanc 13.

Judgments.

Entry of judgment, Knox Chanc 11.

Orders.

Entry of orders, Knox Chanc 11.

Service of process, Knox GenSess 9.**Subpoenas.**

Filing of request, Knox Chanc 5.

Issuance, Knox Juv 11.

TOBACCO SMOKE.**Second hand smoke endangering children.**

Parents' duties to children, Knox Cir IV Rule 25.

TRIAL.**Continuances,** Knox Chanc 7, Knox Crim II, Knox Juv 10.

Chancery court provisions, Knox Chanc 7.

Civil cases, Knox GenSess 10.

Criminal cases, Knox GenSess 14.

Dockets.

Civil trial dockets, Knox GenSess 9.

Compliance docket, Knox GenSess 15.

Criminal cases, Knox GenSess 13.

Daily trial docket, Knox GenSess 4.

Notice.

Civil trial dockets, Knox GenSess 9.

Preparation.

Criminal cases, Knox Crim III.

Settings for trial, Knox Cir IV Rule 6, Knox Crim I.

Clerk or judicial secretary to set.

Sixth district, uniform local rules of practice, Knox 6th Dist Local Practice 2.

Trial management conferences, Knox Cir IV Rule 23.**TRIAL MANAGEMENT CONFERENCES,**

Knox Cir IV Rule 23.

V**VISITATION.****Co-parenting time.**

No agreement, Knox Cir IV Rule 17.

Juvenile court co-parenting schedule,

Knox Juv CSD 5.

Child support division of juvenile court,

Knox Juv 24.

W**WAIVER OF APPEARANCE.****Audio-visual interactive technology.**

Criminal defendants, Knox GenSess 16.

WAIVER OF RULES, Knox Chanc 1, Knox Crim X.**Child support division of juvenile court,**

Knox Juv CSD 8.

WARRANTS.**Civil warrants.**

Format, Knox GenSess 25.

Criminal warrants.

Probable cause lacking.

Review of decision declining issuance,

Knox GenSess 23.

WITHDRAWAL OF COUNSEL, Knox Juv 7.**WITNESSES.****Criminal trials.**

Prisoners.

Transportation, responsibility, Knox Crim III.

Subpoenas, Knox Crim III.

SHELBY COUNTY

CHANCERY COURT
CIRCUIT COURT, THIRTIETH JUDICIAL DISTRICT
CRIMINAL COURT
GENERAL SESSIONS, CIVIL DIVISION
GENERAL SESSIONS, CRIMINAL DIVISION
JUVENILE COURT
PROBATE COURT
SHELBY COUNTY ENVIRONMENTAL COURT

Shelby County

RULES OF PRACTICE OF THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

THIRTIETH JUDICIAL DISTRICT

EFFECTIVE JUNE 25, 2012

(Revised July 1, 2013)

TABLE OF CONTENTS

RULE.	RULE.
1. SESSIONS AND COURTROOM PROCEDURE	16. ARGUMENTS AND BRIEFS
2. ATTORNEYS	17. ORDERS AND DECREES
3. ORDER OF BUSINESS	18. ELECTRONIC FILING OF PLEADINGS AND OTHER PAPERS
4. FORMS OF PLEADINGS	19. MOTIONS FOR NEW TRIAL
5. PLEADING TO BE FILED	20. JURY TRIALS
6. THIRTY (30) DAY EXTENSION TO PLEAD	21. RECORD ON APPEAL
7. ASSIGNMENT OF CAUSES	22. DISMISSAL FOR LACK OF PROSECUTION
8. PROCESS	23. INVESTING FUNDS PER COURT ORDER
9. APPOINTMENT OF GUARDIAN AD LITEM	24. PROCEDURE USED WHEN CHANCELLOR SHOULD CONSIDER DISQUALIFYING HIMSELF
10. MOTION DAYS AND MOTIONS	25. CONTINUANCES
11. TEMPORARY INJUNCTION HEARINGS AND MOTIONS TO MODIFY OR DISOLVE INJUNCTIONS	26. DISCOVERY
12. REFERENCE TO THE MASTER OR TO THE DIVORCE REFEREE	APPENDIX 1. Shelby County Chancery Court Electronic Filing Rules (E-Filing Rules)
13. SETTING CASES BY WAY OF THE ATTORNEYS' TRIAL DOCKET (AKA THE "TEN DAY RULE" DOCKET)	APPENDIX 2. Agreement Relative to Child Support Enforcement Between the Judges and Chancellors of the 30th Judicial District and the Judge of the Juvenile Court of Memphis and Shelby County, Tennessee
14. DIVORCE OR SEPARATE MAINTENANCE TRIALS	
15. HEARING ON PETITIONS FOR ADOPTION	

INTRODUCTORY STATEMENT

By virtue of the authority vested in the Chancellors of the Chancery Court of Shelby County, for the Thirtieth Judicial District of Tennessee, and for the purpose of providing uniformity of procedure in the Court in conformity with

Supreme Court Rule 18 and the Tennessee Rules of Civil Procedure (“TRCP”), the following rules are hereby adopted and promulgated. The Chancellors may deviate from these rules to whatever extent they deem appropriate in order to meet the ends of justice.

RULE 1.

SESSIONS AND COURTROOM PROCEDURE

(a) Court sessions may be held Monday through Fridays inclusive. The Court may convene at such times as may be necessary for the hearing of causes specially set.

(b) The Chancellors shall wear judicial robes at all sessions of the Court, except the requirement may be waived by the Chancellor at any informal hearing.

(c) All persons in the Courtroom shall stand at the opening and closing of Court and while Court is being adjourned or recessed.

(d) All papers shall be handed to the Chancellor by the Sheriff, and no attorney or litigant shall approach the bench or witness stand from the bar except when directed by the Chancellor.

(e) There shall be no smoking in the Courtroom, nor shall food or drink be brought into the Courtroom. All electronic devices, including cellular telephones, pagers, and wrist watch alarms must be turned off before entering the Courtroom. No cameras, video or audio recording equipment will be allowed in the courtroom without Court approval. Electronic devices required to participate in the Court’s electronic filing (E-Filing) will be permitted by leave of Court.

(f) All attorneys and Court attendants shall be appropriately dressed during court sessions; male attorneys shall wear coats and ties.

(g) All litigants, witnesses, and jurors are expected to conduct themselves with reserve and courtesy, and when appearing in Court, to dress appropriately in a clean and neat appearance so as to preserve the dignity of the Court.

(h) Upon the Chancellor entering the Courtroom preparatory to the formal opening of Court, the Sheriff shall call the Courtroom to order, directing all in attendance in Court to stand, and upon being so instructed by the Court, shall open Court in substantially the following manner:

“Hear Ye! Hear Ye! This Honorable Chancery Court of Tennessee, is now open for the transaction of business pursuant to adjournment; all persons having business with the Court draw near and you shall be heard. The Honorable _____, Chancellor presiding. God Preserve these United States and this Honorable Court. Be seated, please.”

Thereupon the Chancellor and those in the Courtroom shall be seated.

(i) All attorneys shall conduct themselves in accordance with the Memphis Bar Association Guidelines for Professional Courtesy and Conduct which shall be made a part of these Local Rules as if set out verbatim herein. These Guidelines can be viewed at www.memphisbar.org. Attorneys and persons attending court shall be treated with courtesy and shall be addressed by their courtesy title (as “Mr.,” “Ms.,” “Mrs.,” “Dr.,” etc.) and not by their first names.

(j) Counsel or pro se litigants shall rise and remain standing while making an objection, argument or statement to the Court, including such time as the

Court may be interrogating or making observations to counsel or pro se litigants. Counsel may either stand or sit while interrogating witnesses. Whenever the Chancellor is ruling, all persons in the Courtroom shall remain seated and, if entering the Courtroom, shall be seated until the Chancellor has finished ruling.

(k) While Court is in session no one may film, photograph, or electronically record any of the proceedings without approval of the Court.

(l) Upon the Chancellor instructing the Sheriff to adjourn Court for the day, the Sheriff shall direct all in attendance in Court to stand and shall adjourn Court in the following manner:

“This Court now stands adjourned.”

(m) In order to insure and maintain proper security for the protection of government property and the safety of the Courts, court personnel, attorneys and all persons in attendance thereof, whether as a plaintiff, defendant, witness, or spectator, the Sheriff of Shelby County is authorized and directed to employ all lawful and constitutional means necessary to insure the security of the courtrooms and all passages, corridors, rooms, and points of ingress and egress thereto. The Sheriff may, circumstances requiring in his discretion, establish and promulgate reasonable regulations not inconsistent with this rule for purposes of carrying out his directive including, but not limited to, the search of all persons seeking to enter the Courthouse or the various courtrooms of Shelby County Chancery Court. Anyone seeking to enter said courtrooms not consenting to a search of their person when requested by one lawfully authorized to conduct said search, shall not be admitted therein. Strip body searches are not authorized. Only authorized personnel serving the Court shall wear side-arms in the courtroom while Court is in session. In the discretion of the Chancellor of each part of this Court, all persons who are legally authorized to carry a firearm because of their status as law enforcement officials may wear said firearms or must check their firearms with the Court Bailiff while they are in the courtroom, or with the nearest office of the Sheriff.

RULE 2.

ATTORNEYS

(a) Attorneys desiring to be sworn in to practice in the Chancery Court shall be introduced in open Court by an attorney of this Bar who vouches for their character and qualifications as an attorney licensed to practice in Tennessee.

(b) Only attorneys at law (or law students certified by the Supreme Court of the State of Tennessee and the Chancellor before whom they appear), and litigants who are representing themselves, will be allowed to appear in matters coming before the Court.

(c) Non-resident attorneys shall be entitled to practice in a particular case upon compliance with Tennessee Supreme Court Rules 19 and 20.

(d) No attorney shall be allowed to withdraw from a case except for good cause shown upon written motion after notice to all parties and attorneys and by order of the Court.

RULE 3.**ORDER OF BUSINESS**

At the opening of Court, orders or announcements may be presented; then the Calendar for the day shall be called.

RULE 4.**FORMS OF PLEADINGS**

(a) All pleadings shall contain a caption and designation as provided by TRCP Rule 10.01 and in addition all complaints, petitions and motions shall, in the designation thereof, contain a short statement of the relief sought, or the nature of the matter contained therein. The Chancellor or Clerk may refuse to accept a pleading not so styled.

(b) All pleadings, addressed to the Court, shall be in the following form to wit: "To the Chancellors of the Chancery Court for the Thirtieth Judicial District."

(c) All pleadings shall conform to the requirements of TRCP Rules 7, 8, 9, 10 and 11, and any pleading not so conforming may, upon motion of attorney, or by the Court sua sponte, be stricken from the docket.

(d) All pleadings and documents bearing the name of a law firm shall also be signed individually by the member of the firm to whom the case is assigned and shall contain the address, phone number and the Supreme Court Disciplinary Number of the attorney filing it or the state of license and state license number if filing pro hac vice.

RULE 5.**PLEADING TO BE FILED**

(a) Unless retained by the Sender in accordance with TRCP Rule 5A or by the E-Filer under Appendix I of these Local Rules, an original of every pleading, including copies of any exhibits attached to the complaint shall be filed in all causes.

(b) Originals of pleadings and other Court documents may not be removed from the Court except by the Clerk or upon an Order of Court, which Order shall specify the time within which the same shall be returned.

RULE 6.**THIRTY (30) DAY EXTENSION TO PLEAD**

Any party may by written stipulation signed by the opposing attorney extend the time for pleading not to exceed thirty (30) days in addition to the period provided by the TRCP, and provided further, that only one such extension shall be granted. Any additional extension not agreed to by stipulation or an additional extension must be granted by the Chancellor.

RULE 7.**ASSIGNMENT OF CAUSES**

(a) The Clerk shall assign each new case to a particular Part of the Court under a random selection procedure approved by the Chancellors. The procedure shall provide for an equal random distribution of the cases filed between the Three Parts.

(b) The Chancellors may, however, by orders, transfer causes from one Part of the Court to another in order to equalize the work of the Parts of the Court, or for their mutual accommodation and convenience.

(c) The Chancellors may enter consent orders for each other by interchange, without formal transfer.

(d) Whenever any case has been dismissed on some ground not going to the merits (e.g., non-suit, mistrial, reversal, setting aside a verdict, etc.), if the case is refiled, it shall be assigned for any subsequent trial to the part of court in which the case was assigned when it was initially filed.

RULE 8.**PROCESS**

The issuance, service and return of process shall be as required by TRCP Rules 4 and 5.

RULE 9.**APPOINTMENT OF GUARDIAN AD LITEM**

Whenever it is made known to the Court, by a pleading or motion that justice requires the representation of a party by a Guardian Ad Litem, the attorney shall submit an order of appointment in compliance with Supreme Court Rule 40A, leaving blank the name of the person or persons to be appointed.

RULE 10.**MOTION DAYS AND MOTIONS**

(a) All motions, except those made in the course of a hearing or a trial, or for a Final Decree of Adoption, shall be in writing and conform to the requirements of TRCP Rule 7.02. Non-dispositive motions shall be heard on Friday of each week, unless otherwise noted by the Clerk on the Motion Docket. Dispositive motions may be specially set at the discretion of the Chancellor.

(b) Attorneys desiring to dispose of non-dispositive motions shall note on the Motion Docket the style and rule docket number of the cause, the attorney for and against the motion, the date of entry in the motion docket and the nature of relief sought.

(c) Separate Motion Dockets shall be kept for each Part of the Court and entries shall be submitted and/or rescheduled on the Shelby County Chancery Court website in the Motion Docket of the Part of the Court to which the cause has been assigned.

(d) Notice of motions shall be in compliance with TRCP Rules 6.04 and 6.05, and entered on the Motion Docket on or before Friday to be heard on the

ensuing Friday unless objection is made for lack of notice required by TRCP Rules 6.04 and 6.05. If objection on such grounds is well taken, the motion shall be passed to the next Motion Day or stricken.

(e) Counsel must file all memorandum briefs and supporting documents with the Clerk. For the non-dispositive Friday Motion Docket, Counsel for the proponent of the motion must deliver a copy of all briefs and memoranda to the Chancellor or the courtroom clerk at least five (5) working court days before the motion is argued, and counsel for the responding party or parties must deliver a copy of all responsive briefs and memoranda to the Chancellor or the courtroom clerk at least two (2) working court days before the motion is argued, to give the Chancellor a reasonable opportunity to read the briefs before the hearing. A working court day does not include weekends, holidays, or the day of the hearing. Specially set hearings will be covered under Rule 16. Failure to follow the above requirements may result in the motion not being heard.

(f) On all motions, the movant must certify that all counsel have conferred in an attempt to resolve the matters at issue in the motion before filing the motion.

(g) Motions for allowance of temporary alimony or child support, or both, will be referred to the Divorce Referee as provided in Rule 12. Motions for modification of awards previously made may be referred to the Divorce Referee, or heard by the Court in its discretion.

(1) When a motion is stricken, it must be rescheduled in accordance with Rule 10(c); however, upon application, motions may be reset for a date not later than the Thursday of the succeeding week.

(2) According to Chapter 161, Private Acts of 1973 (and any acts amendatory and supplemental thereto), all matters, including but not limited to, proctoring complaints for divorce and orders of reference, properly brought before the Divorce Referee may be heard by the Divorce Referee Monday through Thursday at morning and afternoon sessions. The Divorce Referee shall have a publicly available calendar for attorneys and *pro se* litigants to schedule hearings in one-hour intervals from 9:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:00 p.m. at the discretion of the Divorce Referee. These hearings shall be held by the Divorce Referee except for a summer vacation period and State and Federal holidays. Fridays shall be reserved for administrative duties.

(3) The Divorce Referee is primary Proctor and Referee and is assisted by those part-time Deputy Divorce Referees appointed and authorized by Chapter 161, Private Acts of 1973 (and any Acts amendatory and supplemental thereto). Two such Deputy Referees shall preside Tuesday, Wednesday, and Thursday of alternate weeks, convening at 1 :00 p.m.

(h) At the discretion of the Court, all motions requiring the introduction of proof may be deferred until disposition of motions consisting only of argument of attorneys or may be specially set by the Court.

(i) All motions for summary judgment and to dismiss shall be filed at least thirty (30) days before hearing of same. Attorneys for the proponent of the motion shall deliver copies of memorandum briefs to the Court (with a copy of affidavits and supporting documents), and shall file with the Clerk all affidavits and supporting documents at least thirty (30) days prior to the

hearing of the motion. Attorneys for the respondent shall deliver copies of memorandum briefs to the Court (with a copy of affidavits and supporting documents), and shall file with the Clerk all affidavits and supporting documents at least (10) days prior to the hearing of the motion. No motions shall be heard unless there is compliance with this rule.

(j) The Court may in its discretion, hear motions based on the parties' submissions and not grant oral argument.

RULE 11.

TEMPORARY INJUNCTION HEARINGS AND MOTIONS TO MODIFY OR DISSOLVE INJUNCTIONS

(a) Unless the Court, in its discretion decides otherwise, a hearing for temporary injunctions shall be on sworn pleadings, affidavits, counter-affidavits, depositions and/or testimony, which shall be limited to the sole questions of whether or not the temporary injunction is justified, and to dispute material issues of fact.

(b) Motions to modify or dissolve injunctions may be heard upon one day's notice or less, if so ordered by the Chancellor.

RULE 12.

REFERENCE TO THE MASTER OR TO THE DIVORCE REFEREE

(a) At the hearing of a cause, or upon motion, a matter may be referred to the Master in accordance with the provisions of TRCP Rule 53, or to a Divorce Referee in accordance with Section 9, Chapter 161, Private Acts of 1973.

(b) The Court may appoint a Special Master and refer specific issues of law or fact, including discovery disputes. A Special Master shall receive such compensation as may be fixed by the Court to be taxed as part of the Court costs.

(c) Reports of the Master, except Reports of Sale, shall be made in conformity with TRCP Rule 53.04, which Rule shall also be applicable to reports of the Divorce Referee. All reports of the Master, other than Reports of Sale, not excepted to within ten (10) days as required by Rule 53.04(2) will be subject to confirmation by the Court. All exceptions or objections to the report of the Master will be heard pursuant to motion. Exceptions will be heard based upon the record of proceedings before the Master. There shall be no additional proof introduced unless directed by the Court.

(d) Appeals from a Divorce Referee's ruling shall be made by written motion within ten (10) days of the referee's oral or written ruling, and shall be placed on the Motion Docket of the Court to which the case is assigned or specially set by fiat. The motion shall specifically set forth what the movant seeks and where the Divorce Referee was in error. The referee's oral or written ruling on the pendente lite award shall be in effect and enforceable pending the appeal. Appeals shall be heard based on the record of the proceedings before the Divorce Referee. There will be no additional proof introduced unless directed by the Court.

(e) The Master's Report of Sale will be confirmed in accordance with TRCP Rule 53.04 subject to the right of an advance on the bid provided by T.C.A. § 66-8-107.

RULE 13.

SETTING CASES BY WAY OF THE ATTORNEYS' TRIAL DOCKET (AKA THE "TEN DAY RULE" DOCKET)

(a) When a case is ready for hearing, the Attorney for either party may set it for trial by putting the case on the Attorneys' Trial Docket (AKA the "Ten Day-Rule" Docket). After the case is placed on the Attorneys' Trial Docket, the attorney shall immediately notify the opposing attorney in writing.

(b) The procedure shall be as follows: The attorneys desiring to set the case for trial shall enter on the Attorneys' Trial Docket a note showing the style, docket number of the case, the estimated trial time, the nature of the case, the attorneys for the respective parties and the date of entering such note. Thereafter, the Clerk shall set the case for hearing except as provided herein.

At least ten days before the date of the hearing, the Clerk shall send a notice to the attorneys for all parties of the date of the hearing. The setting of hearings of uncontested adoptions is provided for in Local Rule 15.

When a case is set for hearing, the Clerk shall post the trial date on the Attorney Trial Docket.

(c) The Clerk shall keep a separate Attorneys' Trial Docket (AKA "Ten-Day Rule" Docket) for each part of the Court.

(d) When a jury case is placed on the Attorneys' Trial Docket for hearing, the Attorney shall place a notation "Jury Trial" on the Attorneys' Trial Docket so that the Clerk and Court may be advised of the fact that a Jury has been demanded.

RULE 14.

DIVORCE OR SEPARATE MAINTENANCE TRIALS

(a) In suits for divorce or separate maintenance where there is a property settlement or marital dissolution agreement, said agreement should be filed in the case at the time the case is entered on the Attorneys' Trial Docket or prior thereto.

(b) If there is no property settlement or marital dissolution agreement, any party seeking alimony or child support shall file a sworn statement, not less than thirty (30) days before the hearing date, setting forth the applicant's income, needs and expenses showing the purpose and amount and, if known, the income of the respondent. Not less than twenty (20) days before the hearing date, the Respondent shall file a like sworn statement showing income, needs and obligations.

(c) In contested divorces, at least fifteen (15) days prior to the hearing, attorneys shall exchange settlement offers or inform opposing attorney why they have not done so. A copy of such offers shall not be furnished to the Court.

(d) In contested divorces, where the division, description or value of marital assets is in dispute, at least fifteen (15) days before the hearing, the attorneys

shall exchange their list of marital assets with a value placed on each asset; these lists of assets shall be filed with the Court at the time of exchange.

(e) See Rule 12(d) regarding appeals from Divorce Referee’s rulings.

(f) If the parties have children, a separate permanent parenting plan with a child support worksheet attached must also be presented to the Court at the time of the hearing. The final decree must state that the permanent parenting plan makes adequate and sufficient provision for the custody and maintenance of any children of the marriage. If Juvenile Court has assumed jurisdiction over child support, the parties must attach to the permanent parenting plan a copy of the Juvenile Court order setting child support. Appendix 2 provides the Agreement relative to child support enforcement between the Judges and Chancellors of the 30th Judicial District and the Judge of the Juvenile Court of Memphis and Shelby County, Tennessee.

Shelby County

RULE 15.

HEARING ON PETITIONS FOR ADOPTION

Where there is to be a hearing on a noncontested Petition for Final Decree of Adoption, the attorney shall place a notation to this effect on the Attorneys’ Trial Docket (AKA the Ten Day Rule Docket). If the notation is entered on, or before Monday, it will automatically be set for hearing on the following Monday unless otherwise noted by the clerk on the Attorneys’ Trial Docket.

RULE 16.

ARGUMENTS AND BRIEFS

(a) The Court may, in its discretion, limit or direct argument and, in non-jury cases, may choose not to hear closing argument.

(b) Briefs should be prepared in advance of the hearing and the Court encourages the submission of briefs of law in advance of the hearing of a case. Except as otherwise provided in these Local Rules or by the Court, in all matters or hearings of any type, if briefs are to be submitted, they must be delivered to the Court not less than three (3) working court days before the hearing. The Court may call for additional briefs.

(c) See Rule 10(i) regarding time requirements to submit briefs in motions for summary judgments and motions to dismiss.

RULE 17.

ORDERS AND DECREES

(a) Orders and decrees shall be headed by a title indicating the nature thereof. Fiats should include a caption and not made part of another pleading. Unless otherwise permitted by the Court, Orders and Decrees shall be presented to the Court within seven (7) days after the decision is rendered.

(b) Orders and Decrees should be presented when called for immediately after the opening of the Court, or at such other times which do not interfere with the orderly transaction of business. Consent Orders may be signed by Interchange as provided in Rule 7(c).

(c) Orders and Decrees shall be prepared by the attorney for the prevailing parties and submitted to attorneys for other parties for approval. All Orders and Decrees shall bear the original signatures of all parties or their attorneys, or a certificate of the attorney or the Clerk that copies have been served on all parties or attorneys of record as required by TRCP Rule 58(2). With permission, attorneys may sign the opposing counsel's name to Orders and Decrees. Facsimile copies of Orders, Decrees and/or signatures are not permitted.

(d) In the event of a disagreement regarding the proper wording of an Order or Decree, the attorneys shall submit to the Court their version of what they think is the appropriate Order or Decree for the Court's determination. They shall also submit one extra copy with the disputed portions clearly marked.

(e) Orders or Decrees approved by all attorneys of record may be left for the Chancellor's signature with the courtroom clerk of that Part of the Court.

(f) If Orders or Decrees, as presented, are deemed to contain unnecessary or incorrect wording, the Chancellor may revise or have the attorney re-draft the Order or Decree.

(g) Orders or Decrees shall take effect and speak as of the date of entry on the minutes; provided, that the Court may, in its discretion, (nunc pro tunc) permit Orders or Decrees to become effective and speak as of the time of the decision of the case or as of any date between that time and the date of entry on the minutes.

(h) Whenever a report of the Master or of a receiver or Commissioner or other like document is to be recorded on the minutes, the same need not be copied into the body of the decree presented to the Court, but may be incorporated by reference.

(i) The Clerk's office must be assured that all costs have been or will be paid prior to an entry being made on the rule docket that a judgment has been satisfied.

(j) All final orders shall provide for taxing of Court costs and a cost bill information sheet shall be completed for the party against whom costs are assessed.

RULE 18.

ELECTRONIC FILING OF PLEADINGS AND OTHER PAPERS

Pursuant to Rule 5B of the Tennessee Rules of Civil Procedure, courts may, by local rule, adopt electronic systems and allow papers to be filed or verified by electronic means that comply with technological standards promulgated by the Supreme Court. In accordance with Rule 5B, the Chancery Court of Tennessee for the Thirtieth Judicial District at Memphis adopts electronic filing. Pleadings and other papers filed electronically in the Chancery Court shall be considered the same as written papers. Counsel and pro se litigants filing by electronic means are required to agree to the terms and conditions set forth in the Terms of Use found at <https://efile.shelbycountyttn.gov> and are subject to E-Filing Rules set forth in Appendix 1. For the convenience of E-Fileers, an E-File User's Guide is also available on the same website.

RULE 19.
MOTIONS FOR NEW TRIAL

(a) Motions for new trial shall be filed and disposed of as provided by TRCP Rule 59.

(b) Motions for new trial shall be in writing, shall be entered on the Motion Docket, and filed with the Clerk within thirty (30) days after rendition of a jury verdict or the entry of any decree or judgment to which exception is taken. Such motions shall be presented to the Court and disposed of on the next motion docket occurring but not less than five (5) days after the motion has been filed. Additional time may be granted by order of Court.

(c) All motions for new trial shall conform to the following requirements, viz:

(1) If a new trial is sought on the ground of error in the charge of the Court, the particular language of the charge of which complaint is made shall be quoted. No general reference to charge as erroneous as a whole shall be regarded as sufficient, but the particular part or parts of the charge complained of must be pointed out and quoted in the written motion for new trial, followed by a statement explaining why it is contended that the same is erroneous.

(2) It shall not be sufficient to state in general terms that the Court erred in the rejection or admission of evidence, but the party seeking a new trial shall, in the motion for a new trial, point out the testimony which it is contended was erroneously admitted or excluded, either quoting same literally, giving substance of it, or otherwise referring to it in such a manner that the exact part of the evidence so admitted or excluded can be identified specifically at the hearing of the motion for new trial.

RULE 20.
JURY TRIALS

(a) Whenever a complaint or other pleading in which a jury is demanded is presented for filing, the attorney shall endorse on the face thereof the words "Jury Demanded", and such fact shall be called to the attention of the Clerk who shall note the same on the Rule Docket.

(b) The party seeking a jury trial may file such issues of fact as deemed pertinent. Within fifteen (15) days thereafter the adversary party shall file such additional issues as deemed pertinent. A case is considered at issue when answers have been filed to the complaint and to any cross complaints, counter complaints or thirdparty complaints. Any party may object to any issues submitted by the opposing parties. These objections should be disposed of by motion at least three (3) days before the trial. The Court in its discretion may draft, re-draft, or re-cast any issues at any time before submitting them to a jury; and any party may, at the hearing, submit additional issues.

(c) When the Jury case is ready for trial, the case may be put on the Attorneys' Trial Docket (AKA Ten Day Rule Docket) as provided by Rule 13 with the notation "Jury Trial".

(d) The Court, in its discretion, may require the attorneys in jury cases to submit to the Court issues of law and disputed issues of fact three (3) days prior to the commencement of the trial.

The Court may require the attorneys to pre-mark the exhibits at least the day before the trial begins. The Court may allow jurors to have note pads and pencils during the trial. The attorneys are to have enough copies of the exhibits for the Court and each juror.

(e) If a party has special jury instructions which they wish the Court to consider, these jury instructions shall be submitted to the Court at least fifteen (15) days before the trial.

RULE 21.

RECORD ON APPEAL

Transcripts of evidence and all exhibits to be forwarded to the Appellate Court shall be submitted in accordance with the Tennessee Rules of Appellate Procedure.

RULE 22.

DISMISSAL FOR LACK OF PROSECUTION

Whenever a cause has remained on the Rule Docket for twelve (12) months or more without steps being taken by the Plaintiff to prosecute the case, the Clerk and Master or opposing parties shall be entitled, on motion, to request the Court for a dismissal of the cause without prejudice at Plaintiff's costs.

RULE 23.

INVESTING FUNDS PER COURT ORDER

The Clerk and Master's Office shall invest litigant's funds paid into Court only if there is a Court Order directing the Clerk and Master to do so. The Order should state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized.

At the time of payment of the funds or when the Order is entered, if later, it shall be the DUTY OF THE ATTORNEY seeking investment of funds to specifically notify the Clerk receiving payment that the funds are to be invested and to provide an IRS form W-9 to the Clerk and Master's Bookkeeping Department for the Party responsible for the tax liability.

If no instructions are provided as to investment within 30 days of payment of funds, said funds shall be invested at the sole discretion of the Clerk and Master in conformity with statutory limitations.

RULE 24.

PROCEDURE USED WHEN CHANCELLOR SHOULD CONSIDER DISQUALIFYING HIMSELF

Requests to the Court to consider disqualification may be made by motion or in conference and shall be considered on a case by case basis in accordance with Supreme Court Rule 10 (the Code of Judicial Conduct).

RULE 25.**CONTINUANCES**

(a) Cases shall not be continued by agreement, but shall be continued only by leave of Court. Cases shall not be continued except for good cause which shall be brought to the attention of the Court as soon as practicable before the date of the trial.

(b) Normally, the absence of a witness will be grounds for a continuance where the subpoena for a local witness was issued five (5) days or more before the date of trial, and seven (7) days where the witness is out of the county; however, each application for a continuance is subject to the discretion of the Court.

(c) Failure to have completed discovery, inability to take depositions, or failure to have completed any other trial preparations shall not be legal grounds for a continuance, but shall be subject to the discretion of the Court.

(d) If a case is continued, a new trial date may be assigned at the time of continuance, or the case may be placed on the Attorneys' Trial Docket (AKA Ten Day Rule Docket) for future setting.

RULE 26.**DISCOVERY**

Unless ordered otherwise, all discovery requests and responses must be filed with the Clerk. Documents or things produced for inspection pursuant to TRCP Rule 34, are not to be filed with the Clerk whether in paper or electronic form. Responses to Interrogatories, Request for Admissions, and Request for Production of Documents shall be numbered and shall set forth, immediately preceding the response, the question or request made in the same numerical sequence.

No party shall serve on any other party more than thirty (30) interrogatories without leave of Court. For purposes of this Rule a sub-part of an interrogatory shall count as an additional interrogatory. Any motion seeking permission to serve more than thirty interrogatories shall set out the additional interrogatories the party wishes to serve, together with the reasons establishing good cause for the service of additional interrogatories. If a party is served with more than thirty interrogatories, without order of the Court, the party shall respond only to the first thirty.

APPENDIX 1. SHELBY COUNTY CHANCERY COURT ELECTRONIC FILING RULES (E-FILING RULES)

Part 1 — General Provisions and Authority

The E-Filing Rules set forth in this Appendix govern the electronic filing of pleadings and other papers in the Chancery Court of Tennessee for the Thirtieth Judicial District. Courts may, by local rule, adopt electronic systems and allow papers to be filed or verified by electronic means that comply with technological standards promulgated by the Tennessee Supreme Court. In accordance with Rule 5B of the Tennessee Rules of Civil Procedure, the Chancery Court of Tennessee for the Thirtieth Judicial District adopts electronic filing. Pleadings and other papers filed electronically in the Chancery Court shall be considered the same as written papers.

Part 2 — Short Title

These rules may be cited as “Shelby County Chancery Court E-Filing Rules”.

Part 3 — E-Filing Definitions

The following terms in these E-Filing Rules shall be defined as follows:

“Authorized Users” means the following persons who, upon completion of the registration requirements, may E-File Documents:

- a. Attorneys licensed to practice law in Tennessee;
- b. Pro hac vice attorneys;
- c. All court judges and their staff; and
- d. The Clerk and all deputy clerks of the Clerk’s Office;

“Clerk” means the Clerk & Master of the Shelby County Chancery Court.

“Clerk’s Office” means the office of the Clerk in the Shelby County Courthouse building in Memphis as designated by the Clerk.

“Convenience Fee” is a fee charged in connection with electronic filing that is in addition to regular filing fees. A Convenience Fee will be considered a court cost.

“Court” means the Shelby County Chancery Court and all Chancellors thereof.

“Document” means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the TRCP and the Local Rules.

“Document Management System” or “DMS” means a computer system owned and in the custody of the Clerk’s Office which maintains all electronic and scanned paper-documents filed in the Court in electronic form.

“E-File” or “E-Filing” means the electronic transmission of original Documents to the Court, and from the Court, for the purposes of E-Filing. For purposes of these rules, the process does not include the filing of faxed documents.

“E-Filer” is an attorney or *pro se litigant* who has a court-issued login and password allowing E-Filing of documents into the DMS.

“E-Filing Rules” means the Shelby County Chancery Court E-Filing Rules.

“E-Filing Website” means a website maintained by the Clerk for the purpose

of providing a means for E-Filers to access the DMS and file Documents with the Clerk and Court.

“Local Rules” mean the Rules of the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District.

“Party” or “Parties” means any person, including an individual, executor, administrator or other personal representative, or a corporation, partnership, association or any other legal, governmental or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state who is a party in a case pending in the Court and is represented by an attorney or acting pro se.

“PDF” or “Portable Document Format” means a computer file format developed by Adobe Systems for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents. To be filed electronically, a Document must be converted to a PDF. Converted Documents must contain the “.pdf” file extension.

“Public Access Terminal” means a publicly accessible computer provided by the Clerk for the purposes of allowing E-Filing and viewing of public electronic court records. The public access terminal shall be located in the Clerk’s Office and made available during normal business hours. The Clerk’s Office may also offer printed copies of the electronic court records and apply relevant copying fees as permitted by relevant statutory and court rules.

“System Administrator” means the Shelby County employee designated by the Clerk to administer the DMS and the registration of Authorized Users.

“Terms of Use Agreement” means that agreement established by the Clerk that sets forth the parameters for use of the E-Filing Website by all Authorized Users.

“Traditional Filing” is a process by which a Party files a paper document with the Clerk.

“Transaction Receipt” means an e-mail confirmation that is transmitted to an E-Filer after an E-Filer has submitted a Document to the Clerk to be filed through the E-Filing Website. The Transaction Receipt displays the date and time the Document was submitted by the E-Filer. The Transaction Receipt may serve as the E-Filer’s proof of filing.

“TRCP” means the Tennessee Rules of Civil Procedure.

“User Guide” means the Court’s user guide. All E-Filers should periodically check the Chancery Court website (<http://chancerycourt.shelbycountyttn.gov/>) for updates to the User Guide.

Part 4 — Effect on Existing Local Rules

These E-Filing Rules are adopted as an Appendix to the Local Rules of the Court and do not supersede or replace any other Local Rules of the Court.

Part 5 — Electronic Filing Encouraged Unless Ordered by Court

(a) E-Filing of Documents is strongly encouraged by this Court. Except as provided by subsection (b) below, a Document that can be Traditionally Filed with the Court may be E-Filed.

(b) The Court or the Clerk may exclude Documents and/or certain types of cases from E-Filing. Notice of these excluded Documents and/or cases will be provided on the Court's E-Filing Website.

Part 6 — Scope of Rules

(a) Except as expressly provided herein, for all new cases filed on or after the effective date of these E-Filing Rules, the Court shall accept as validly filed all Documents that are filed through E-Filing.

(b) The Court and the Clerk may issue, file, and serve notices, orders, and other documents electronically, subject to the provision of these E-Filing Rules.

(c) E-Filers may obtain access to the E-Filing Website either through an internet access point or by using the Clerk's Public Access Terminal located in the Clerk's Office.

Part 7 — Electronic Case File

The Clerk shall maintain the original and official case file in electronic format for those cases filed on or after the effective date.

Part 8 — Registration Requirements

(a) Persons who are Authorized Users and who desire to electronically file a Document shall register as an E-Filer on the E-Filing website. Upon receipt of a properly executed Terms of Use Agreement, the System Administrator shall assign to the Authorized User a confidential login and password to the E-Filing Website. Additional E-Filers may be added at any time.

(b) E-Filers shall change their E-Filing profile immediately upon any change in firm name, delivery address, phone number, fax number or e-mail address.

(c) The Clerk will provide all Authorized Users with access to a User Guide to assist them in E-Filing.

Part 9 — Time and Effect of E-Filing

Any E-Filed Document shall be considered as filed with the Clerk when the transmission of the entire Document is received by the Clerk. Any Document received by the Clerk before midnight local time of the Clerk's Office shall be deemed filed on that date if such Document otherwise meets all the requirements for filing under the relevant rules of the Court. Upon receipt by the Clerk of an E-Filed Document, the Clerk shall electronically transmit a Transaction Receipt indicating that the E-Filing has been received. The Transaction Receipt shall serve as proof of filing. In the event the Clerk rejects the submitted Document following review, the rejected Document shall not become part of the official Court record and the E-Filer will receive notification of the rejection. E-Filers may be required to re-file the Document to meet necessary filing requirements.

Part 10 — Form of Documents Electronically Filed

(a) Each E-Filed Document shall be uploaded in a PDF. The Document should be formatted in accordance with the applicable Terms of Use

Agreement, as well as, the TRCP and Local Rules governing formatting of paper documents, and in such other and further format as the Court may require from time to time.

(b) In addition to the information required by TRCP Rule 11 and any other Local Rule, the Party or attorney signing a Document that is being E-Filed shall also include an e-mail address, unless the Party or attorney does not maintain an e-mail address and relies on the Public Access Terminal.

Part 11 — Payment of Filing Fees

(a) All E-Filed Documents subject to statutory filing fees shall require payment of such filing fees immediately upon filing unless excused by the Court. These filing fees must be paid with a credit card at the time of E-Filing. Use of the E-Filing Website constitutes E-Filer’s consent to process or charge the credit card supplied.

(b) The Clerk may charge E-Filers a Convenience Fee to E-File Documents. This Convenience Fee will be in addition to regular filing fees or other fees.

(c) Refunds due to improper collection will require the E-Filer to contact the Clerk’s Office directly. Refunds will not be made in cash.

Part 12 — Signatures

A Document that is required to be signed by a party, verified, notarized, acknowledged, sworn to, or made under oath may be E-Filed only as a scanned image. The original Document shall be maintained by the Party or the attorney E-Filing the Document and shall be made available upon reasonable notice, for inspection by other counsel, the Clerk or the Court. Parties or their attorneys shall retain originals until final disposition of the case and the expiration of all appeal opportunities.

Part 13 — Privacy Issues

E-Filers must be sensitive to confidential and personal information filed publicly, not under seal. E-Filers shall refrain from including, or shall redact as follows where inclusion is necessary, the following personal identifiers from all documents filed publicly with the Clerk, including exhibits thereto, unless required by statute or otherwise ordered by the Court:

(a) **Social Security Numbers.** If a social security number must be included in a document, only the last four digits of that number must be used.

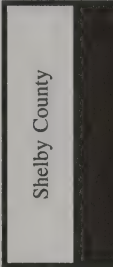
(b) **Dates of Birth.** If an individual’s date of birth must be included in a document, only the year must be used.

(c) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers must be used.

In addition, exercise caution when filing documents that contain the following:

- (1) Personal identifying number, such as a driver’s license number
- (2) Medical Records, treatment and diagnosis
- (3) Employment History
- (4) Individual Financial Information
- (5) Proprietary or Trade Secret Information

It is the sole responsibility of E-Filers to be sure that all Documents comply



with the rules of this Court requiring redaction of personal identifiers. The Clerk will not review each Document for redaction.

Part 14 — System or User Filing Errors

If the E-Filing does not occur because of: (1) an error in the transmission of the Document to the Clerk which was unknown to the sending party, (2) a failure to process the electronic Document when received by the Clerk, (3) rejection by the Court or Clerk, or (4) other technical problems experienced by the E-Filer or the Clerk, the Court may, upon satisfactory proof, enter an order permitting the Document to be filed nunc pro tunc to the date the Document was first attempted to be filed electronically and may also extend the date for any response or the period within which any right, duty or other act must be performed.

Part 15 — Effective Date

These revised rules shall become effective on the 1st day of July, 2013.

**APPENDIX 2. AGREEMENT RELATIVE TO CHILD SUPPORT
ENFORCEMENT BETWEEN THE JUDGES AND CHANCELLORS OF
THE 30TH JUDICIAL DISTRICT AND THE JUDGE OF THE
JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY,
TENNESSEE**

The Judges and Chancellors of the Circuit and Chancery Courts of the 30th Judicial District and Tenth Chancery Division of the State of Tennessee, and the Judge of the Juvenile Court of Memphis and Shelby County entered into an Agreement dated October 1, 1985, pursuant to Title IV-D of the Social Security Act to set, enforce, and modify child support orders. Said courts find it necessary to enter into a new agreement. The Judges and Chancellors hereby agree and enter this agreement as follows, TO WIT:

1. The Judges and Chancellors of the Circuit and Chancery Courts of the 30th Judicial District may enter into an agreement with Juvenile Court to set, enforce, and modify child support orders and that, as contemplated in Tennessee Code Annotated § 36-5-401 et seq., the Juvenile Court of Memphis and Shelby County has jurisdiction to provide child support enforcement in the 30th Judicial District, consisting of Shelby County, Tennessee, pursuant to Title IV-D of the Social Security Act.

2. Referees of the Circuit and Chancery Courts in Shelby County have the authority to conduct hearings pursuant to the setting of support as prescribed in Tennessee Code Annotated § 36-5-405, subject to review by a judge. Juvenile Magistrates of the Juvenile Court have, subject to confirmation by the Juvenile Court Judge, all of the powers of trial judges in conducting child support and other proceedings. Child Support Magistrates of the Juvenile Court have, subject to confirmation by the Juvenile Court Judge, all powers of trial judges in conducting child support proceedings.

3. To fully satisfy the requirements of State and Federal law relative to child support enforcement, there should be an agreement, as prescribed in Tennessee Code Annotated § 36-5-402(b)(2), between judges having child support jurisdiction in Shelby County, Tennessee whereby the juvenile court shall have jurisdiction in said county over all child support actions pursuant to Title IV-D of the Social Security Act.

WHEREFORE, it is hereby agreed that the judges of the Circuit and Chancery Courts and the judge of the Juvenile Court of the 30th Judicial District, which consists entirely of Shelby County, Tennessee, having concurrent jurisdiction in child support matters as provided by law, shall exercise such jurisdiction in their respective courts in furtherance of the purpose and intent of the Child Support Enforcement Act of 1985 in accordance with the terms and conditions agreed upon, which are as follows:

1. The Juvenile Court shall exercise jurisdiction in all cases pursuant to Title IV-D of the Social Security Act cases.

2. The Juvenile Court shall also exercise child support jurisdiction in which the Circuit or Chancery Court had prior jurisdiction, and one of the parties makes application for Title IV-D services.

3. Upon evidence being presented to the Circuit or Chancery Court that an order of support has been entered in Juvenile Court, or that an application for

child support assistance has been made to Juvenile Court, such Circuit Judge or Chancellor will leave such cause for purposes of support in the Juvenile Court. The Circuit and Chancery Courts shall not act upon any original petition for support in a matter in which Juvenile Court has assumed jurisdiction pursuant to this agreement. The Circuit and Chancery Courts shall require parties petitioning for child support to include in said petition or by affidavit whether application for assistance with child support enforcement has been made pursuant to Title IV-D Services Act prior to entering an order of child support.

4. In any child support case in which the Circuit or Chancery Court has exercised prior jurisdiction and one of the parties executes an assignment for Title IV-D services, the IV-D agency shall file the Notice to Redirect Payments required by Tennessee Code Annotated § 36-5-803, and a notice to transfer the case to the Juvenile Court. The notice shall be filed with the Clerk of the Circuit or Chancery Court, and an original copy shall be stamped "FILED" by the respective clerk.

The Title IV-D agency shall file the original stamped copy with the Juvenile Court Clerk. Such notice shall contain the names of the parties, TCSSES Number, the docket number and the address of record of the parties.

5. It is the intent and purpose of this agreement that all child support matters in which the custodian of a child makes application for assistance in obtaining child support pursuant to Title IV-D of the Social Security Act, and those cases in which support rights have been assigned to the State by recipients of public assistance be dealt with in Juvenile Court, and that as to all other matters pertaining to child support, jurisdiction shall continue to be exercised by the Circuit or Chancery Court that had original jurisdiction.

6. In the event that the Circuit or Chancery Court modifies parenting time or primary residential parent status, the Circuit or Chancery Court will notify the Juvenile Court of the modification by sending a copy of the order to the Juvenile Court Clerk. Such order shall contain the names of the parties, the Circuit or Chancery Court docket number and the TCSSES number, if available.

7. A case that has been transferred to the Juvenile Court shall remain in the court to be heard as a Title IV-D case for so long as it shall remain a Title IV-D case. In the event Title IV-D services are discontinued, the Juvenile Court, at its discretion, may retain jurisdiction or the court may direct the Title IV-D agency to file notice in the appropriate court to return the case to said court.

8. The Chancery and Circuit Courts and Juvenile Court shall adopt such rules of court as they deem necessary to assure compliance with the terms of this agreement.

This agreement may be modified in writing at any time.

[Agreement signed December 4, 2009.]

**RULES OF THE CIRCUIT COURT OF TENNESSEE FOR
THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS,
SHELBY COUNTY**

REVISED AND ADOPTED EFFECTIVE JUNE 25, 2012

TABLE OF CONTENTS

INTRODUCTION

- RULE.
- I. COURTROOM PROCEDURE
 - II. SESSIONS OF COURT
 - III. FILING OF PLEADINGS
 - IV. CALENDARS AND ASSIGNMENTS OF CASES
 - V. NON-DISPOSITIVE MOTIONS
 - VI. DISPOSITIVE MOTIONS
 - VII. MOTIONS FOR NEW TRIAL
 - VIII. COURT RECORDS
 - IX. STIPULATIONS
 - X. ORDERS AND DECREES
 - XI. CONSENT ORDERS
 - XII. DISCOVERY
 - XIII. DOMESTIC RELATIONS MOTIONS BEFORE DIVORCE REFEREE
 - XIV. DOMESTIC RELATIONS CASES
 - XV. APPEARANCE AND CONDUCT OF COUNSEL
 - XVI. NOTICE OF TRIAL DATES
 - XVII. KEEPING THE CLERK ADVISED
 - XVIII. INVESTMENT OF FUNDS
 - XIX. COURTROOM SECURITY
 - XX. SETTING ATTORNEY FEES

- RULE.
- XXI. ATTORNEYS AS PARTIES
 - XXII. CONSOLIDATION OF CASES
 - XXIII. TRANSFERS
 - XXIV. NOTICE OF COMPLEX CASES
 - XXV. PRIVATE PROCESS SERVERS
 - XXVI. PERSONS WITH DISABILITIES
 - XXVII. COURT INTERPRETERS
 - XXVIII. USE OF COORDINATING JUDGE TO HANDLE PRE-TRIAL PROCEDURES IN MASS TORT OR SIMILAR LITIGATION

APPENDICES

- Appx. 1. MEMPHIS BAR ASSOCIATION GUIDELINES FOR PROFESSIONAL COURTESY AND CONDUCT
- Appx. 2. Agreement Relative to Child Support Enforcement Between the Judges and Chancellors of the 30th Judicial District and the Judge of the Juvenile Court of Memphis and Shelby County, Tennessee
- Appx. 3. Shelby County Circuit Court Electronic Filing (E-Filing Rules)

INTRODUCTION

For the purpose of complying with Supreme Court Rule 18, the Tennessee Rules of Civil Procedure and to establish workable guidelines consistent with fairness and simplicity in procedure, and to eliminate unnecessary expense and delay, it is ordered that the following rules be, and the same hereby are adopted, by the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis.

RULE ONE.

COURTROOM PROCEDURE

(A) All Judges will wear judicial robes during all sessions of court except when the nature of the matter justifies an informal hearing.

Shelby County

(B) All persons in the courtroom will stand while court is being opened and while court is being adjourned or recessed.

(C) All orders, judgments and decrees will be handed to the Court through the Sheriff. Lawyers and litigants will not approach the Bench or the witness stand from the Bar except when directed by the Judge.

(D) There will be no smoking, eating, chewing gum or reading of non-legal writings in the courtroom. All electronic devices, including cellular telephones, pagers, and wrist watch alarms must be turned off before entering the courtroom. No cameras, video or audio recording equipment will be allowed in the courtroom without prior Court approval.

(E) The personal appearance and conduct of attorneys in the courtroom is visible evidence of their respect for the rule of law and the administration of justice. All attorneys shall wear professional attire. All other persons attending court must conduct themselves with reserve and courtesy and must dress appropriately in a clean and neat appearance so as to preserve the dignity of the court.

(F) On matters concerning courtesy and conduct, Rule 9 of the Supreme Court of Tennessee and the Guidelines for Professional Courtesy and Conduct adopted by the Memphis Bar Association shall be followed. Attorneys and persons attending court shall be treated with courtesy and shall be addressed by their courtesy title (as "Mr.", "Ms.", "Mrs.", "Dr." etc.), and not by their first names.

(G) When the Judge enters the courtroom, before the opening of court, the Sheriff will call the courtroom to order, direct everyone to stand, and when instructed by the Judge, will open court in substantially the following manner:

"Hear Ye! Hear Ye! This Honorable Division ____ of the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis is now open for the transaction of business pursuant to adjournment; all persons having business with this court draw near, give attention, and ye shall be heard. The Honorable Judge _____ presiding. Be seated please."

(H) Only attorneys at law (or law students certified by the Supreme Court of the State of Tennessee and the Circuit Judge before whom they appear), and litigants who are representing themselves, will be allowed to appear in matters coming before the court. Counsel or *pro se* litigants shall rise and remain standing while making an objection, argument or statement to the Court, including such time as the Court may be interrogating or making observations to counsel or *pro se* litigants. Counsel may either stand or sit while interrogating witnesses.

(I) When the Judge instructs the Sheriff to adjourn court for the day, the Sheriff will direct everyone in the courtroom to stand and will adjourn court in substantially the following manner:

"This court now stands adjourned until tomorrow morning at ____ o'clock (or until a day certain)."

(J) Sheriffs in attendance upon courts will be charged with the responsibility for requiring compliance with these standards of courtroom conduct and deportment.

RULE TWO.
SESSIONS OF COURT

The trial docket will be called at 10:00 a.m. Mondays through Thursdays. The Court may specially set matters, at 9:00 a.m. on Mondays, Tuesdays and Thursdays, or at any other time determined by the Court to meet the needs of a particular case. Each division of court will set its own adjournment time. Uncontested divorces will be heard at 9:00 a.m. on Wednesdays, or at such other times as determined by the Court. Legal motions will be heard at 9:00 a.m. on Fridays, or at such other times as determined by the Court. Other matters will be heard following legal motions, or at such other times as determined by the Court.

RULE THREE.
FILING OF PLEADINGS

- (A) Pursuant to Rule 5B of the Tennessee Rules of Civil Procedure, courts may, by local rule, adopt electronic systems and allow papers to be filed or verified by electronic means that comply with technological standards promulgated by the Supreme Court. In accordance with Rule 5B, the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis adopts electronic filing. Pleadings and other papers filed electronically in the Circuit Court shall be considered the same as written papers. Counsel and pro se litigants filing by electronic means are required to agree to terms and conditions set forth in the Terms of Use found at <https://efile.shelbycountyttn.gov> and are subject to E-Filing Rules set forth in Appendix 3. For the convenience of E-Fileers, and E-File User's Guide is available on the same website.
- (B) All pleadings, orders, decrees, memoranda, and other papers submitted for consideration or action by the Court must be captioned "IN THE CIRCUIT COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS." All such documents must be in the English language.

RULE FOUR.
CALENDARS AND ASSIGNMENTS OF CASES

- (A) All new cases filed, including proposed settlements and requests for writs, shall be assigned immediately by the Clerk by a computerized random assignment (calculated to distribute cases evenly) to a division of the court. The Clerk will assign new divorce cases in the same manner to both Circuit and Chancery Courts, according to the agreement between the courts.
- If a divorce complaint has already been filed, any petition or motion for a protective order or an injunction involving the same parties shall be heard in the division of court to which the divorce case is assigned.
- (B) Non-Jury cases will be set for trial either by the courtroom clerk in consultation with the judge, or by the calendar clerk. A Non-Jury calendar shall be published by the Clerk giving the dates upon which cases are set.
- (C) Jury cases will be set for trial by the Judge in each division of court with the assistance of the courtroom clerk as follows:

(1) In Divisions I, II, III, V, VI and VIII, a list of the cases to be set for Trial during the jury trial period shall be published for each of these divisions at least one week before the calendar is called for setting those cases, and upon the calling of the calendar, the cases will be set for trial upon a day certain.

(2) In Divisions IV, VII, IX, cases will be set for trial by the use of a Readiness Certificate. When the case is ready for trial either counsel may file a Readiness Certificate with the courtroom clerk. Any counsel or party may file an objection to a trial setting within ten (10) days of the filing of the Readiness Certificate. Either party may file a motion to dispose of the objection to setting the case for trial. After ten (10) days, if no objection has been filed, the courtroom clerk will set the case for trial and notify all counsel of the trial date. When a Readiness Certificate is filed, counsel is certifying that the case will be ready for trial in all respects and that counsel will be available for trial.

(3) In addition to the above, counsel or pro se litigants may approach the Court to request a trial date.

(D) All cases set for trial will be tried or dismissed on the day upon which they are set for trial, or upon proper showing of legal cause by either party, a case may be continued. A dismissal docket will be set periodically in each division of court containing all cases that have had no activity for at least six (6) months.

(E) Whenever any case has been dismissed on some ground not going to the merits (e.g., non-suit, mistrial, reversal, setting aside a verdict, etc.), if the case is refiled, it shall be assigned for any subsequent trial to the division of court in which the case was assigned when it was initially filed.

The attorney filing any cause covered by this rule shall inform the Clerk of such filing and the Clerk shall assign the cause to the division of court in which the prior cause was filed.

(F) Settlements may be presented to the Court for approval at the opening of court on any day of the week or at such other times as the Court may direct.

RULE FIVE.

NON-DISPOSITIVE MOTIONS

(A) The Circuit Court Clerk will have a "Motion Docket" for each division of court. Attorneys must enter motions setting forth the case number, style of the case, attorney(s) for the motion, attorney(s) against the motion, the date of entry of the motion and the nature of the motion. If the entry of the motion does not contain all of the foregoing information the motion will not be heard, except by leave of court.

(B) All motions except those made during the actual trial of the case must be entered on the motion docket. Only those motions placed on the motion docket by the close of business on the preceding Friday will be heard. Before setting the motion the attorney for the moving party shall consult with counsel for the other party or parties to select a convenient date for all counsel.

(C) A written motion (other than one which may be heard *ex parte*), and notice of the hearing thereof, shall be served not later than five (5) days before the time specified for the hearing, unless a specific period is fixed by these rules or by order of the Court. If no opposition is filed and delivered in response to

the motion at least two (2) days before the hearing, the Court may grant the motion. Such notice shall be mailed to all adversary counsel or unrepresented party's last known address. This rule shall apply in cases of judgments by default.

(D) Motions will be heard in each division of court on Fridays at 9:00 a.m., or at such other times as determined by the Court. Appropriate notice will be posted when a court will not have a motion docket on Friday. If a lawyer is aware that an argument will be prolonged, the lawyer should advise the Court in advance and the Court may set the motion specially.

(E) After a motion has been docketed, no party may strike or postpone a motion without the agreement of all parties. If a motion is to be stricken or postponed by agreement, counsel must notify the courtroom clerk as soon as practicable. If the parties do not agree to postpone a motion, the Court may hear a motion to postpone prior to the hearing of the scheduled motion. If any party strikes or postpones a motion without agreement of all parties of record or without leave of Court, the Court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing.

(F) Counsel must file all memorandum briefs and supporting documents with the Clerk. Counsel for the proponent of the motion must deliver a copy of all briefs and memoranda to the Judge or the courtroom clerk at least five (5) days before the motion is argued, and counsel for the responding party or parties must deliver a copy of all responsive briefs and memoranda to the Judge or the courtroom clerk at least two (2) days before the motion is argued, to give the Judge a reasonable opportunity to read the briefs before the hearing. Failure to follow the above requirements may result in the motion not being heard.

(G) The Court may, in its discretion, hear motions submitted on briefs and not grant oral argument.

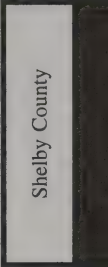
(H) On all motions, the movant must certify that all counsel have participated in a conference to attempt to resolve the matters at issue in the motion before filing the motion.

RULE SIX.

DISPOSITIVE MOTIONS

(A) All motions for summary judgment and to dismiss shall be filed with the Clerk at least thirty (30) days before the motion is heard, along with the proponent's memorandum brief and any affidavits and supporting documents. The proponent must also deliver a copy of the memorandum brief to the Judge or the courtroom clerk (with a copy of any affidavits and supporting documents). Counsel for the respondent must file a memorandum brief with the Clerk and deliver a copy to the Judge or the courtroom clerk (with a copy of any affidavits and supporting documents) at least ten (10) days before the motion is heard. Service copies to all adverse parties must meet the same deadlines.

(B) No motions will be heard unless all parties have complied with this rule. The Court, however, may extend or shorten these time limits and assess any resulting expenses to the party causing the delay, or the Court may rule upon



the motion without waiting for the required documents to be filed. The Court may, in its discretion, hear motions submitted on briefs and not grant oral argument.

RULE SEVEN.

MOTIONS FOR NEW TRIAL

(A) All motions for a new trial or to alter or amend must be set for hearing within thirty (30) days after filing the motion.

(B) The written motion for a new trial or to alter or amend judgment shall conform to the following requisites:

(1) When the basis for the motion for new trial is error in the Court's charge, the specific error must be pointed out by quoting the particular language of that charge in the written motion. No general reference to the charge as erroneous as a whole will be deemed sufficient.

(2) When the basis for the motion for new trial is that the Court erred in the rejection or admission of evidence, it is not sufficient to merely state that the Court erred in the rejection or admission of evidence. The party seeking a new trial on this basis is required to point out in the motion the particular testimony admitted or rejected, either by quoting the specific testimony or giving the substance of the testimony in such a manner that the exact part of the evidence can be identified with sufficient clarity and specificity.

(C) This rule must be copied in every transcript of every case appealed from this court in which a new trial was sought on the grounds of error in the charge of the court or in the admission or rejection of evidence.

RULE EIGHT.

COURT RECORDS

(A) No court records, including exhibits, may be taken from the clerk's office except by a Judge or a clerk or by written Court order.

(B) At the conclusion of a case, the parties or their counsel shall assemble and account for all exhibits and file them with the Clerk. Counsel or the party who introduced an exhibit other than an 8 ½ x 11 document shall retain the exhibit. If the case is appealed, the appellant shall reduce the exhibit to a size the Clerk of the Appellate Court will receive.

(C) After entry of the final order in a case, the Clerk shall retain exhibits for one year. If no appeal is pending after one year, the Clerk shall notify counsel or self-represented party that all exhibits will be destroyed unless counsel or the party who introduced an exhibit informs the Clerk of the party's intent to retrieve the exhibit. Unless otherwise directed by the Court, the Clerk may destroy exhibits that have not been retrieved after thirty days of notice to counsel or self-represented party. This rule shall apply to depositions that are not marked as exhibits but are made part of the technical record. [Amended effective February 19, 2020.]

RULE NINE.
STIPULATIONS

The Court encourages stipulations, however, no agreement, understanding or stipulation of parties or of their attorneys in any pending cause will be recognized or enforced by the Court unless made in open court or in writing and filed in the cause.

RULE TEN.
ORDERS AND DECREES

(A) Orders and decrees shall be presented for entry on the minutes within SEVEN (7) DAYS after the decision is rendered, the date of which must be stated in the body of the order or decree. Orders or decrees shall be prepared by counsel for the prevailing party and submitted to adversary counsel for approval. When an order is presented to opposing counsel, it is counsel's duty, if it correctly states the Court's ruling, to approve it "as to form" and signing and returning it. In the event of disagreement about the order, the party disagreeing must note all objections in writing, and must also prepare an alternative order or decree. All differences must be highlighted and must reference the page and line numbers from the transcript if available. The alternative order or decree should adhere as nearly as practicable to the wording adopted by counsel for the prevailing party. Both proposed orders or decrees must be submitted to the Court together with any transcript of the ruling.

(B) If the adversary counsel fails or refuses to sign and promptly return the order or decree, the party preparing the order or decree must give notice of the time and place when the order will be presented to the Court, and be prepared to enter the order at that time, with a certificate of service to opposing counsel. If counsel for the prevailing party complies with this rule by serving the proposed order upon all other counsel, and receives written permission from other counsel to sign their names to the order, counsel for the prevailing party may sign the order for other counsel and present the written authority to the Court. In cases involving multiple parties, counsel for the non-prevailing parties may submit their signatures by facsimile.

(C) All orders and decrees shall be presented in open court (except for consent orders presented pursuant to Local Rule 11) when called for by the Court, immediately after the opening of court each morning.

(D) If the opposing party has no counsel of record, the attorney or party preparing the order must send a copy of the order to the opposing party along with a notice of the time and place when the order will be presented to the Court, to give the opposing party an opportunity to appear and object to the wording of the order, or to present the party's own order.

RULE ELEVEN.
CONSENT ORDERS

(A) Consent orders are not required to be submitted in open court, provided that the following requirements are met:

(1) Counsel must physically deliver the order to the courtroom clerk personally or by mail. However, if the consent order is mailed, counsel are responsible for following up with the courtroom clerk to ensure that the order is placed upon the court's minutes.

(2) Self-addressed return envelopes must be included with the order, so that the attested copies can be mailed back to the submitting lawyers.

(3) All consent orders filed must be signed by the attorneys of record, to foreclose any question of real consent. Such consent orders must have the word "consent" in the caption and body of the order.

(B) The following consent orders must be submitted in open court:

(1) Orders relating to child support or custody, either temporary or permanently.

(2) Orders relating to the settlement of minors' cases.

(3) Orders relating to the settlement of Worker's Compensation cases.

(4) Orders that involve the Court's discretion.

RULE TWELVE.

DISCOVERY

(A) When answering Interrogatories, Requests for Admissions, and Requests for Production of Documents, the interrogatory or request shall be numbered and the replying party must, as a part of the answer, set forth immediately preceding the answer, the interrogatory or the request made, in the same numerical sequence.

(B) In responding to Requests for Production of Documents, the respondent must specifically list each document that is being produced, by reference to the title of the document, or by reference to a numbering system, such as "Bate" numbers.

(C) Documents or things produced for inspection, pursuant to T.R.C.P. Rule 34, are not to be filed with the clerk. The parties may agree in writing upon a repository of the documents or things produced, and the presence or absence of the document or thing in the repository shall be determinative of the question of whether the document or thing was produced. The burden of establishing that the matter sought to be produced was not in fact produced will be on the person asserting that it has been produced.

(D) No party shall serve on any other party more than thirty (30) interrogatories without leave of Court. For purposes of this Rule a sub-part of an interrogatory shall count as an additional interrogatory.

Any motion seeking permission to serve more than thirty (30) interrogatories shall set out the additional interrogatories the party wishes to serve, together with the reasons establishing good cause for the service of additional interrogatories. If a party is served with more than thirty (30) interrogatories, without order of the Court, he shall respond only to the first thirty (30).

(E) The Court will not hear any motion related to discovery unless counsel for the movant files with the motion, a statement which certifies that movant's counsel has conferred with opposing counsel in a good faith effort to resolve the discovery dispute and that the effort has not been successful. If the certification asserts that opposing counsel has refused or delayed discussion of the

discovery issues raised in the motion, the Court will take appropriate action when resolving the motion so as to prevent further delay.

(F) Motions to compel must state a summary of the information sought, the response given, and the reason why the response is inadequate.

(G) The Court may refer discovery disputes to a master.

RULE THIRTEEN.

DOMESTIC RELATIONS MOTIONS BEFORE DIVORCE REFEREE

(A) Motions for allowance of temporary alimony or child support, or both, will be referred to the Divorce Referee. Motions for modification of awards previously made must be referred to the Divorce Referee by the entry of an order of reference or, in the Judge's discretion, may be heard by the Court. Whether heard by the Court or Divorce Referee, a sworn statement required in Rule Fourteen (C) must be filed not less than three (3) days before the hearing date. A Divorce Referee's Motion Docket for such motions will be maintained in the Clerk's office. Motions will be on a form provided by the Clerk and kept in a loose leaf binder.

(1) Motions for allowance of temporary alimony or child support will be heard by the Divorce Referee eight (8) days after notice in accordance with T.R.C.P. Rules 6.01, 6.04, and 6.05, and will be heard each week as set forth in this rule. When a motion is stricken, it must be refiled; however, upon application, motions may be reset for a date not later than the Thursday of the succeeding week. Motions for temporary alimony or child support cannot be placed on the Divorce Referee Motion Docket until the defendant has been served with original process. Such motions cannot be mailed to the Clerk.

(2) The Divorce Proctor is the primary Proctor and Referee and is assisted by those part-time Deputy Divorce Referees appointed and authorized by Chapter 161, Public Acts of 1973 (and any acts amendatory and supplemental thereto). All matters, including but not limited to, proctoring complaints for divorce and orders of reference, properly brought before the Divorce Referee may be heard by the Divorce Referee Mondays through Thursdays at morning and afternoon sessions. The Divorce Referee shall have a publicly available calendar for attorneys and unrepresented litigants to schedule hearings in one-hour intervals from 9:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:00 p.m. at the discretion of the Divorce Referee. These hearings shall be held by the Divorce Referee except for a summer vacation period and State and Federal Holidays. Fridays shall be reserved for administrative matters. At least two Deputy Divorce Referees shall preside Tuesdays, Wednesdays and Thursdays of each week, convening at 1:00 p.m.

(3) Each party must provide the Divorce Referee with an affidavit of income and expenses, as required by Rule Fourteen (C) at the hearing for temporary support. Failure to comply with this requirement may result in sanctions pursuant to T.R.C.P. Rule 37. The ruling of the Divorce Referee or Deputy Referee will be noted on a blotter to be maintained by the Divorce Referee.

(4) The party petitioning for child support must include a statement in the petition or by affidavit whether application for assistance with child support enforcement has been made pursuant to Title IV-D Services Act.

(B) Orders confirming the Divorce Referee's ruling must be submitted to the Court in which the case is assigned within seven (7) days of the Referee's ruling as provided by Rule Ten of these rules.

(C) The finding of the Divorce Referee will become final unless an appeal from said finding is made within (10) days as provided by these rules. Appeals from the Divorce Referee's ruling must be made by written motion within ten (10) days of the Referee's written ruling, and must be placed on the Friday 10:00 a.m. Docket in the Division to which the case is assigned, or specially set by *fiat*. The motion shall specifically set forth what the movant seeks and specifically how the Divorce Referee was in error. Appeals will be heard based on the record of the proceedings before the Divorce Referee. There will be no additional proof introduced unless otherwise directed by the Court. The Divorce Referee's written ruling will be in effect and enforceable pending any hearing on the appeal.

RULE FOURTEEN.

DOMESTIC RELATIONS CASES

(A) Irreconcilable Differences Procedure

(1) Sworn testimony is required at the hearing of irreconcilable differences cases to satisfy jurisdictional requirements and to establish that the marital dissolution agreement provides for the "equitable settlement of the property rights between the parties." The above language of the statute must be used in the decree.

(2) The marital dissolution agreement must be incorporated in the final decree verbatim or by reference in the discretion of the Court. The final decree must state that the marital dissolution agreement provides for the equitable settlement of the property rights between the parties.

(3) Divorces based on irreconcilable differences cannot be heard until sixty (60) days (no children) or ninety (90) days (with children) have elapsed since filing of the complaint in accordance with T.C.A. § 36-4-103.

(4) If the parties have children, a separate permanent parenting plan with a child support worksheet attached must also be presented to the Court at the time of the hearing. The final decree must state that the permanent parenting plan makes adequate and sufficient provision for the custody and maintenance of any children of the marriage. If Juvenile Court has assumed jurisdiction over child support the parties must attach a copy of the Juvenile Court order setting child support to the permanent parenting plan. Appendix 2 provides the Agreement relative to child support enforcement between Judges and Chancellors of the 30th Judicial District and the Judge of the Juvenile Court of Memphis and Shelby County, Tennessee.

(B) Uncontested Divorces

(1) All suits for divorce in which the parties agree that the case is ready and will be tried uncontested, or in which the time for answer has expired and the defendant has not appeared or answered, must be set and heard in accordance with this Rule.

(2) In all divorce cases in which no responsive pleading has been filed, after service of process has been completed, a judgment by default under T.R.C.P. Rule 55 must be obtained before the case can be heard further.

(3) Unless otherwise required by law, default judgment before trial is not required in irreconcilable differences divorces, but the opposing party must be given five (5) days written notice of the hearing. Divorces on other grounds will not be heard until thirty (30) days after the default judgment order has been entered. Settings on uncontested cases may be obtained from the Circuit Court Clerk. Uncontested divorce cases will be set at 9:00 a.m. on Wednesday mornings or at such other time as the Court directs. The attorney setting the case for a hearing must give the opposing party or attorney five (5) days written notice of the date and time of the hearing.

(C) Sworn Statement Pertaining to Child Custody, Child Support or Alimony

(1) In all contested divorces, suits for separate maintenance, or for legal separation, each party must file with the clerk, no later than ninety (90) days before trial, a sworn statement setting forth the party's income, a list of expenses, and a description and valuation (or estimate) of real and/or personal property possessed in any form, the state of its title, and the party's claimed interest in such property. The sworn statement must also include, if known, or if the information is reasonably procurable, the income and property interest of the opposing party, both real and personal, and the valuation thereof. Any changes in the statement while the case is pending must be disclosed as soon as possible, and not later than ten (10) days before the trial.

(2) The sworn statement must also set forth separately the amount deducted from salary for social security and income tax. Self-employed persons must estimate these sums, using governmental guidelines or other reliable sources that are available.

(3) In all custody proceedings, the sworn statements required by T.C.A. § 36-4-106(b)(1) must also be contained within the pleadings or in an affidavit attached to the pleading.

(D) Contested Divorces

(1) At least twenty-four (24) hours before trial of any contested divorce is scheduled, counsel shall deliver to the Judge a memorandum that includes:

(a) Certification that the party's Rule Fourteen (C) affidavit of income and expenses has been filed.

(b) Whether the client seeks a divorce, legal separation, separate maintenance or to remain married.

(c) Whether grounds can be stipulated to avoid proof. (T.C.A. § 36-4-129)

(d) The names and ages of any children of the parties.

(e) Whether the party seeks primary residential parent status of the child or children.

(f) The amount and specific times of parenting time.

(g) The amount of child support sought. (Child Support Guidelines Worksheet must be attached.)

(h) Proposed disposition of the marital residence.

(i) Fair market value of the marital residence and amount of mortgage.

(j) Proposed disposition of any other real property and its fair market values.

(k) Proposed division of debts.

(l) Specific items of personalty sought, and its values.

(m) The amount and type of alimony sought.

(n) The amount of attorney's fee sought.

(o) Certification that the above written proposals were submitted to opposing counsel at least 24 hours before the trial.

(E) Divorces with Children

(1) Before any hearing by the Court, other than the final hearing, each party shall file a proposed temporary parenting plan, in conformity with T.C.A. § 36-6-401 *et seq.*, along with a verified statement of income as defined under existing law and local rules.

(2) The parties must submit to the court (either jointly or separately) a proposed permanent parenting plan on the day of the uncontested divorce hearing. The Child Support Guidelines Worksheet must be attached to the Permanent Parenting Plan.

(3) Forms for a parenting plan are available from the Clerk, the Divorce Referee, or from the Administrative Office of the Courts at www.tncourts.gov. Forms for the Child Support Guidelines Worksheets can be found at www.state.tn.us/humanserv/is/incomeshares.htm.

(4) In conformity with T.C.A. § 36-4-408, in every case in which the Court will be called upon to order parenting responsibilities, each parent shall attend (either separately or together) a court-approved parent educational seminar as soon as possible, but no later than sixty (60) days after the initial filing of the complaint, unless otherwise ordered by leave of the Court. The seminar shall be designed to educate parents, to protect and enhance the child's emotional development, in a divorce context, and to inform parents regarding the legal process of divorce. These seminars shall also include a discussion of alternative dispute resolution, perpetrator attitudes and conduct involving domestic violence. The program may be divided into sessions, which in the aggregate shall not be less than four hours in duration and shall be educational in nature, and not designed for individual therapy. The minor children shall be excluded from attending these sessions. This requirement may be waived only upon motion by either party and permission of the Court, upon a showing of good cause.

The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by each party and may be assessed by the court, if necessary. Such fees may be waived, upon motion, by Court order.

The parties shall file, under the case docket number, certificates, evidencing their attendance at the aforesaid seminar, at least five days before any court hearing, provided that the Referee may conduct a hearing for temporary support without such certificate, but only upon a finding that immediate need justifies such hearing without a certificate. Any parent living outside the state may submit a certificate from a comparable education seminar in the jurisdiction where he or she lives.

(F) Modification of Decrees

Counsel for any party seeking a modification of any divorce decree must

present to the Judge a sworn petition setting forth the grounds relied upon for the modification. Upon presentation of a *Fiat* signed by the Judge, the courtroom clerk will then set a hearing date, status conference, or order of reference for the petition. Petitions to modify alimony and/or child support will be first heard by the Divorce Referee as provided in Rule Thirteen.

NOTES TO DECISIONS

1. Transmutation.

Trial court did not err in finding that a business was marital property because sufficient evidence supported its conclusion of transmutation of any of the business that could have ever been a husband's separate property; marital funds were used to purchase the later-acquired properties that comprised the busi-

ness, all of the various properties the parties owned were under the umbrella of a corporation that was a marital asset, and the business, was held out as the parties' joint property. *Trezevant v. Trezevant*, 568 S.W.3d 595, 2018 Tenn. App. LEXIS 213 (Tenn. Ct. App. Apr. 25, 2018), appeal denied, — S.W.3d —, 2018 Tenn. LEXIS 622 (Tenn. Sept. 18, 2018).

Shelby County

RULE FIFTEEN.

APPEARANCE AND CONDUCT OF COUNSEL

(A) All counsel who have entered an appearance in a case will be counsel of record. Entry of an appearance will be made in one of the following ways:

- (1) A written request by counsel to the Clerk that an appearance be entered;
- (2) the filing of pleadings;
- (3) the filing of a formal notice of appearance;
- (4) appointment by the Court.

(B) Attorneys are required to file a notice of appearance or have the Clerk place the attorney's name on the case file immediately upon being employed in any case. Attorneys will remain as counsel of record until excused by the Court or until the judgment becomes final.

(C) No attorney will be allowed to withdraw except for good cause and by leave of Court upon motion after notice to all parties.

(D) No attorney or party to a pending action is permitted to communicate *ex parte* with the Judge hearing the case except consistent with the Rules for Professional Conduct and the Code of Judicial Conduct.

RULE SIXTEEN.

NOTICE OF TRIAL DATES

The official notification of the setting of cases for trial is by the posting of court calendars on the bulletin board of the Clerk's offices and/or the Clerk's official website: www.circuitcourt.co.shelby.tn.us. Failure to receive a courtesy notice from the Clerk's office will not be recognized as a ground for continuance.

RULE SEVENTEEN.

KEEPING THE CLERK ADVISED

Attorneys and unrepresented parties are responsible for keeping the clerk advised of their correct mailing addresses and telephone numbers at all times. Written notice must be given to the Clerk. Failure to do so may result in lack

of notice to a party or attorney of important court proceedings. It is not the responsibility of the court or the clerk to investigate the whereabouts of a party or attorney.

RULE EIGHTEEN.

INVESTMENT OF FUNDS

(A) Any order, judgment or decree that provides for the investment of funds by the clerk must be brought to the attention of the Clerk, Deputy Administrator or Office Manager. The Clerk shall have ten (10) business days to determine the sufficiency of the funds deposited if paid by check.

(B) The attorney for the party involved in the investment of said funds is responsible for obtaining proof from the clerk of such investment no sooner than ten (10) business days from entry of the order, judgment or decree.

(C) Proof of the investment must be a copy of the receipt from the financial institution where the funds are invested, and must reflect the date and account number.

RULE NINETEEN.

COURTROOM SECURITY

(A) In order to insure and maintain proper security for the protection of government property and the safety of the Court, court personnel, attorneys and all persons in attending the court proceedings, whether as a litigant, witness, or spectator, the Sheriff of Shelby County is authorized and directed to employ all lawful and constitutional means necessary to insure the security of the courthouse, courtrooms and all passages, corridors, rooms, and points of ingress and egress thereto. The Sheriff may establish and promulgate reasonable regulations not inconsistent with this Rule to carry out the Court's directive including, but not limited to, the search of all persons seeking to enter the courthouse or courtrooms of the Shelby County Circuit Court Divisions. Any person who does not consent to a personal search, when requested by one lawfully authorized to conduct searches, will not be admitted. Strip body searches are not authorized.

(B) Only authorized personnel serving the court are permitted to wear sidearms in the courtroom while court is in session. In the discretion of the Judge of each division all persons who are legally authorized to carry a firearm because of their status as law enforcement officials may wear said firearms in the courtroom, if they are present only as disinterested witnesses. All other persons legally authorized to carry firearms must check all firearms with the court bailiff or with the nearest office of the Sheriff, while the person is in the courtroom.

RULE TWENTY.

SETTING ATTORNEY FEES

Whenever it is necessary for the Court to determine fees of attorneys, the attorney must file an affidavit setting forth an itemized statement of the

services rendered, the time spent, a suggestion of the fee to be awarded, along with a statement of other pertinent facts, and such other information as the Judge may request.

RULE TWENTY-ONE.

ATTORNEYS AS PARTIES

In any action in which a Shelby County attorney is a real, rather than a nominal party, the parties must file a written notice of that fact with the Court within thirty (30) days after the first responsive pleading in Circuit Court, or the docketing of the case in Circuit Court (whichever is sooner). The written notice must include: a description of the nature of the case, whether a jury has been demanded, and whether or not the attorney-party intends to testify. The Court will then forthwith decide whether or not to request that a Judge from outside Shelby County be designated to hear the case, and will notify counsel for the parties of the decision. Nothing herein shall prevent counsel for either party from requesting that the Court obtain designation of an extra-county judge.

Shelby County

RULE TWENTY-TWO.

CONSOLIDATION OF CASES

In instances in which consolidation of cases for trial is appropriate, and the cases have been assigned to different divisions of the court by the Clerk, in the absence of important reasons to the contrary, the case with the higher docket number should be transferred into the division of court which has the case with the lower docket number.

Counsel must first obtain permission from the Judge where the case with the lower docket number is pending to determine whether that Judge will accept the transfer of the case with the higher docket number. If the Judge agrees to accept the transfer, counsel must then request the Judge with the higher docket number to transfer that case to the Court with the lower docket number for consolidation. If that Judge agrees then counsel should prepare an order transferring the case with the higher docket number to be signed by the transferring Judge and an order of consolidation to be signed by the receiving Judge.

RULE TWENTY-THREE.

TRANSFERS

(A) Cases set for trial in any division of Circuit Court may be transferred on the trial date to any other division that will accept the transfer. Attorneys waiting for trial are required to remain in the immediate area of the courtroom, unless the Judge gives the attorneys permission to leave the area. At the time of transfer, no dispositive motion should be pending before the transferring judge. After the case has been transferred, the case will remain in the new division for all subsequent proceedings.

(B) In the event a judge deems recusal necessary, and there is no common conflict with the other circuit judges, the transferring judge will send a

memorandum to the Clerk requesting that another division be chosen at random. If there is a conflict common to the other circuit judges, a memorandum will be circulated to the other circuit judges and chancellors asking if they are willing to accept the case. If no circuit judge or chancellor can accept the case, the transferring judge will request that an out-of-county judge be appointed to hear the case.

RULE TWENTY-FOUR.

NOTICE OF COMPLEX CASES

All Counsel are required to inform the Court, well in advance of trial, of any case that is:

- (1) expected to be over five (5) days in length, or
- (2) involves over four (4) separately represented parties, or
- (3) involves complex questions of fact or law, or
- (4) in which there is anticipated a number of questions which should be resolved before jury selection, or
- (5) in which, for any other reason, reasonably requires advance notice to the Court to avoid delay, confusion, or error at trial.

All motions *in limine* that can be reasonably anticipated should be filed and presented to the Court well before the day of the trial. Failure to abide by this rule may result in continuance of the trial, or such other action as the Court deems proper. Any party may request a pre-trial conference with the Court.

RULE TWENTY-FIVE.

PRIVATE PROCESS SERVERS

If process is to be served by persons other than the Sheriff or his deputies, the return shall state clearly and legibly the name and residence address and telephone number of the process server, the business name and its address; the process server's age, the date and place where process was served, and the manner of service. It shall be signed by the server, and the signature shall constitute a solemn representation to the court that the process was served as stated.

All returns must be made upon the process paper itself, unless there is not sufficient room on the process paper itself, in which case, the return shall be made upon a separate paper, referring specifically to the process served, and shall be physically attached to the process.

RULE TWENTY-SIX.

PERSONS WITH DISABILITIES

Counsel with knowledge of a litigant or witness involved in the trial or hearing with a disability requiring special accommodation must notify the courtroom clerk of the division of court in which the matter is to be heard, with a copy of said the notice to the Judge. The written notice must be given at least ten (10) days before the hearing, in order to allow the Court to comply with the letter and spirit of the Americans with Disabilities Act. Failure to comply with this requirement may result in the matter being continued.

RULE TWENTY-SEVEN.**COURT INTERPRETERS**

(A) In accordance with Rule 42 of the Rules of the Supreme Court, it shall be the duty and responsibility of counsel of record to notify the Court, not less than fifteen (15) days prior to any legal proceeding, of the expected participation by a party, witness, or other person who is a Limited English Proficient person.

(B) It shall be the duty of the parties to secure the services of a State Certified Court Interpreter prior to any trial or hearing and present an Order of Appointment to the Court not less than fifteen (15) days prior to the proceeding. Such order shall include the name(s), business address(es), and telephone number(s) of the Interpreter(s) and their certification number(s).

(C) In the event a party seeks appointment of an Interpreter of lesser preference, the party shall submit to the Court, not less than thirty (30) days prior to the proceeding a petition setting forth the basis for such appointment addressing the criteria set forth in Rule 42(d)(e) and (f) of the Rules of the Supreme Court.

RULE TWENTY-EIGHT.**USE OF COORDINATING JUDGE TO HANDLE PRE-TRIAL PROCEDURES IN MASS TORT OR SIMILAR LITIGATION**

(A) In mass tort litigation matters, if one or more of the parties deem that the use of a coordinating judge is required to handle pre-trial procedures, or consider consolidation, the party may make application to the Judge in whose division the cases lie. The Judge will decide whether such matters should be referred to all the Circuit Court Judges for consideration. Also, any Judge on his or her own motion may submit the matter for consideration. The Judges will meet to determine the necessity of a coordinating judge, the method of choosing the coordinating judge, and other relevant and appropriate details. The coordinating judge will handle all preliminary and pretrial matters in the referred matters. After the preliminary matters and pretrial matters, including all relevant discovery matters, are concluded, any remaining matters will be sent back to the various divisions to which the cases are assigned. Any Judge may recall matters referred from his or her division at any time.

(B) Factors to be considered in determining whether or not to choose a coordinating judge may include, but are not limited to, whether or not the matter involves one or more common questions of law and fact and whether the use of a coordinating judge will promote the just, efficient and fair conduct of the pre-trial procedures, and/or any consolidated trial.

(1) Factors to be considered in deciding whether the standard set forth above is met include:

(a) the extent to which coordination will reduce duplicative motion practice, the relative costs of individual and consolidated pre-trial procedures, the likelihood of inconsistent rulings, and the comparative burdens on the judiciary; and

(b) whether coordination can be accomplished in such a way that is fair to the parties and does not result in undue inconvenience to them and the

witnesses. In considering these factors, account may be taken of matters such as:

- (i) the number of parties and actions involved;
- (ii) the existence and significance of local concerns;
- (iii) the subject matter of the dispute;
- (iv) the amount in controversy;
- (v) the significance and number of common issues involved;
- (vi) the likelihood of additional related matters being commenced in the future;
- (vii) the wishes of the parties; and
- (viii) the stages to which the actions have progressed.

(C) The coordinating judge may be chosen by the Circuit Court Judges in a manner agreeable to all of the judges. The name of the Circuit Court Judge chosen to handle the pre-trial procedures will be promptly reported by the Senior Circuit Judge to the attorneys involved. Thereafter, all the referred matters will be handled by the chosen Judge.

(D) Nothing contained herein shall in any way be considered as giving any Circuit Court Judge the authority over any other judge or the cases which have been, or are to be, assigned to him or her by the Clerk in accordance with state law and the existing local rules.

APPENDIX 1. MEMPHIS BAR ASSOCIATION GUIDELINES FOR PROFESSIONAL COURTESY AND CONDUCT

PREAMBLE

A lawyer’s duty to each client is to represent that client zealously within the bounds of the law. In striving to fulfill that duty, a lawyer must ever be conscious of the broader duty owed to the legal system which is designed to resolve human and societal problems in a rational and logical manner.

A lawyer owes to the judiciary a duty of candor, honesty, diligence and utmost respect.

A lawyer owes to opposing counsel a duty of courtesy, fairness, and cooperation.

A lawyer should strive to achieve higher standards of conduct than those called for by the Code of Professional Responsibility.

A lawyer owes to the administration of justice a duty of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines for Professional Courtesy and Conduct are hereby adopted. These Guidelines are not intended nor should they be construed as establishing any minimum standards of professional care or competence. The sole purpose of adopting these guidelines is to promote and foster the ideals of professional courtesy, conduct and cooperation set out above.

I. COURTESY, CIVILITY AND PROFESSIONALISM

1. A lawyer should treat the opponent, the opposing party, the court and the members of the court staff with courtesy and civility, conducting business in a professional manner at all times.

2. A lawyer has no right, even when called upon by a client to do so, to abuse or to indulge in offensive conduct towards the opposite party. A lawyer should always treat adverse witnesses and parties with fairness and due consideration.

3. While in adversary proceedings, clients are litigants, and while ill feelings may exist between them, such ill feeling(s) should not influence a lawyer’s conduct, attitude, or demeanor towards opposing lawyers.

4. A lawyer should do all that is necessary to ensure that clients, the public, and other lawyers respect the judicial system. To this end, a lawyer should:

- (a) Never knowingly misstate fact or law, regardless of any pressure to do so.
- (b) Not engage in tactics that complicate or delay matters unnecessarily.
- (c) Avoid creating unrealistic expectations of a client or the public.
- (d) Avoid denigrating the legal profession, the court system or adversary counsel.

5. A lawyer should encourage methods and practices which simplify and make less expensive the rendering of legal services.

6. A lawyer should never institute or pursue a legal procedure solely for the lawyer’s own profit where there is no reasonable expectation that it will advance or contribute to the best interest of the client.

7. A lawyer should preserve and respect the law by observing all duties to the community and to the Profession. To this end, a lawyer should:

Shelby County

(a) Contribute time and expertise to those unable to otherwise afford representation of their interests.

(b) Participate in public service and public education activities through personal involvement and financial contributions, and encourage fellow lawyers to do the same.

(c) Work to develop among lawyers a strong commitment to the ideals of integrity, honesty, competence, fairness, independence, courage, and dedication to the public interest.

8. A lawyer should recognize the importance of communication with both clients and adversaries. A lawyer should return all telephone calls and respond to all correspondence promptly.

9. A lawyer should never deceive the court or another lawyer.

10. A lawyer should honor promises or commitments made to another lawyer.

11. A lawyer should make every reasonable effort to cooperate with opposing counsel.

12. A lawyer should maintain a cordial and respectful relationship with opposing counsel.

13. A lawyer should seek sanctions against opposing counsel only where required for the protection of the client or of the legal system and not for mere tactical advantage.

14. A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.

15. A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.

16. A lawyer should always be punctual.

II. PROFESSIONAL CONDUCT IN LITIGATION

1. A lawyer should respect the schedule and commitments of opposing counsel, clients, and the courts, thereby promoting the efficient administration of justice and public confidence in our profession. To this end, a lawyer should:

(a) Consult opposing counsel, when practical, before scheduling hearings and depositions.

(b) Avoid unnecessary continuances of trials, hearings or depositions.

(c) Immediately notify opposing counsel and the court of scheduling conflicts.

2. A lawyer should consult opposing counsel in an effort to resolve matters by agreement before filing motions or requesting hearings.

3. A lawyer should refrain from engaging in unnecessary, excessive or abusive discovery. Requests for production of documents should not be excessive or designed solely to place a burden on the opposing party.

4. A lawyer should comply fully with reasonable discovery requests and should not countenance obstructive or evasive tactics. To this end, a lawyer should:

(a) Exchange information voluntarily, when practical, without formal discovery requests;

(b) Upon request produce all responsive documents, and produce them as they are kept in the ordinary course of business or organize and label them to

correspond with the categories in the request.

5. A lawyer should stipulate to matters where they are undisputed or where no genuine basis for objection exists.

6. A lawyer should always contact opposing counsel in an effort to resolve litigation. Since most cases are ultimately settled, initiating such discussions at the outset is recognition of reality, not a sign of weakness.

7. A lawyer should make reasonable efforts to conduct all discovery by agreement.

8. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or an opposing party.

9. A lawyer should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

10. A lawyer should avoid unnecessary delays. To this end, a lawyer should:

(a) Give notice of cancellation of depositions and hearings to the court and opposing counsel at the earliest possible time.

(b) Submit any proposed order promptly to opposing counsel and attempt to reconcile any differences before presenting it to the court.

(c) Respond promptly to any proposed order submitted by opposing counsel.

11. A lawyer drafting a proposed order should reflect in it clearly and accurately the ruling of the court and nothing more.

12. A lawyer should serve copies of all briefs upon opposing counsel at the time that they are filed with the court.

13. A lawyer should not take a default judgment without first giving reasonable notice to opposing counsel or to the opposing party if not represented by counsel, of his intention to do so, and should agree to set aside such a default judgment when reasonable cause exists and his client upon his recommendation consents.

14. A lawyer should grant reasonable extensions of time to opposing counsel where such extensions will not have a material adverse effect on the rights of the client.

15. A lawyer should not attempt to obtain an advantage by informal communication with the court.

III. PROFESSIONAL CONDUCT IN BUSINESS AND COMMERCIAL PRACTICE

1. A lawyer should determine the sophistication, goals, and demands of the client before representing the client in a transaction.

2. A lawyer should ascertain and respect the scope of the negotiating authority granted by the client.

3. A lawyer should be guided by the client's goal in completing a transaction. To this end, a lawyer should:

(a) Utilize terms which are clear, concise and practical in drafting documents.

(b) Not make an issue of matters of form when revising documents. Pride of authorship, when matters of substance are not involved, only contributes to delay and cost in a transaction.

4. A lawyer should not seek tactical advantage by delaying negotiations

until the last minute. To promote efficiency and fairness a lawyer should, whenever possible, treat the negotiation of a transaction and the closing thereof as mutually exclusive activities.

5. A lawyer should not use the threat of legal proceedings or of the possible effect thereof as a means of obtaining an unjustified advantage for a client.

6. When a lawyer requires as part of a transaction an opinion letter from another lawyer, it should deal only with the matters requested, any reservation being clearly stated.

**APPENDIX 2. AGREEMENT RELATIVE TO CHILD SUPPORT
ENFORCEMENT BETWEEN THE JUDGES AND CHANCELLORS OF
THE 30TH JUDICIAL DISTRICT AND THE JUDGE OF THE
JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY,
TENNESSEE**

The Judges and Chancellors of the Circuit and Chancery Courts of the 30th Judicial District and Tenth Chancery Division of the State of Tennessee, and the Judge of the Juvenile Court of Memphis and Shelby County entered into an Agreement dated October 1, 1985, pursuant to Title IV-D of the Social Security Act to set, enforce, and modify child support orders. Said courts find it necessary to enter into a new agreement. The Judges and Chancellors hereby agree and enter this agreement as follows, TO WIT:

1. The Judges and Chancellors of the Circuit and Chancery Courts of the 30th Judicial District may enter into an agreement with Juvenile Court to set, enforce, and modify child support orders and that, as contemplated in Tennessee Code Annotated § 36-5-401 et seq., the Juvenile Court of Memphis and Shelby County has jurisdiction to provide child support enforcement in the 30th Judicial District, consisting of Shelby County, Tennessee, pursuant to Title IV-D of the Social Security Act.

2. Referees of the Circuit and Chancery Courts in Shelby County have the authority to conduct hearings pursuant to the setting of support as prescribed in Tennessee Code Annotated § 36-5-405, subject to review by a judge. Juvenile Magistrates of the Juvenile Court have, subject to confirmation by the Juvenile Court Judge, all of the powers of trial judges in conducting child support and other proceedings. Child Support Magistrates of the Juvenile Court have, subject to confirmation by the Juvenile Court Judge, all powers of trial judges in conducting child support proceedings.

3. To fully satisfy the requirements of State and Federal law relative to child support enforcement, there should be an agreement, as prescribed in Tennessee Code Annotated § 36-5-402(b)(2), between judges having child support jurisdiction in Shelby County, Tennessee whereby the juvenile court shall have jurisdiction in said county over all child support actions pursuant to Title IV-D of the Social Security Act.

WHEREFORE, it is hereby agreed that the judges of the Circuit and Chancery Courts and the judge of the Juvenile Court of the 30th Judicial District, which consists entirely of Shelby County, Tennessee, having concurrent jurisdiction in child support matters as provided by law, shall exercise such jurisdiction in their respective courts in furtherance of the purpose and intent of the Child Support Enforcement Act of 1985 in accordance with the terms and conditions agreed upon, which are as follows:

1. The Juvenile Court shall exercise jurisdiction in all cases pursuant to Title IV-D of the Social Security Act cases.

2. The Juvenile Court shall also exercise child support jurisdiction in which the Circuit or Chancery Court had prior jurisdiction, and one of the parties makes application for Title IV-D services.

3. Upon evidence being presented to the Circuit or Chancery Court that an order of support has been entered in Juvenile Court, or that an application for child support assistance has been made to Juvenile Court, such Circuit Judge

Shelby County

or Chancellor will leave such cause for purposes of support in the Juvenile Court. The Circuit and Chancery Courts shall not act upon any original petition for support in a matter in which Juvenile Court has assumed jurisdiction pursuant to this agreement. The Circuit and Chancery Courts shall require parties petitioning for child support to include in said petition or by affidavit whether application for assistance with child support enforcement has been made pursuant to Title IV-D Services Act prior to entering an order of child support.

4. In any child support case in which the Circuit or Chancery Court has exercised prior jurisdiction and one of the parties executes an assignment for Title IV-D services, the IV-D agency shall file the Notice to Redirect Payments required by Tennessee Code Annotated § 36-5-803, and a notice to transfer the case to the Juvenile Court. The notice shall be filed with the Clerk of the Circuit or Chancery Court, and an original copy shall be stamped "FILED" by the respective clerk.

The Title IV-D agency shall file the original stamped copy with the Juvenile Court Clerk. Such notice shall contain the names of the parties, TCSES Number, the docket number and the address of record of the parties.

5. It is the intent and purpose of this agreement that all child support matters in which the custodian of a child makes application for assistance in obtaining child support pursuant to Title IV-D of the Social Security Act, and those cases in which support rights have been assigned to the State by recipients of public assistance be dealt with in Juvenile Court, and that as to all other matters pertaining to child support, jurisdiction shall continue to be exercised by the Circuit or Chancery Court that had original jurisdiction.

6. In the event that the Circuit or Chancery Court modifies parenting time or primary residential parent status, the Circuit or Chancery Court will notify the Juvenile Court of the modification by sending a copy of the order to the Juvenile Court Clerk. Such order shall contain the names of the parties, the Circuit or Chancery Court docket number and the TCSES number, if available.

7. A case that has been transferred to the Juvenile Court shall remain in the court to be heard as a Title IV-D case for so long as it shall remain a Title IV-D case. In the event Title IV-D services are discontinued, the Juvenile Court, at its discretion, may retain jurisdiction or the court may direct the Title IV-D agency to file notice in the appropriate court to return the case to said court.

8. The Chancery and Circuit Courts and Juvenile Court shall adopt such rules of court as they deem necessary to assure compliance with the terms of this agreement.

This agreement may be modified in writing at any time.

[Agreement signed December 4, 2009.]

APPENDIX 3. SHELBY COUNTY CIRCUIT COURT ELECTRONIC FILING (E-FILING RULES)

Part 1. — General Provisions and Authority

The E-Filing Rules set forth in this Appendix govern the electronic filing of pleadings and other papers in the Circuit Court of Tennessee for the Thirtieth Judicial District. Courts may, by local rule, adopt electronic systems and allow papers to be filed or verified by electronic means that comply with technological standards promulgated by the Tennessee Supreme Court. In accordance with Rule 5B of the Tennessee Rules of Civil Procedure, the Circuit Court of Tennessee for the Thirtieth Judicial District adopts electronic filing. Pleadings and other papers filed electronically in the Circuit Court shall be considered the same as written papers.

Part 2. — Short Title

These rules may be cited as “Shelby County Circuit Court E-Filing Rules”.

Part 3. — E-Filing Definitions

The following terms in these E-Filing Rules shall be defined as follows:

“Authorized Users” means the following persons who, upon completion of the registration requirements, may E-File Documents:

- a. Attorneys licensed to practice law in Tennessee;
- b. Pro hac vice attorneys;
- c. All court judges and their staff; and
- d. The Clerk and all deputy clerks of the Clerk’s Office;

“Clerk” means the Clerk of the Shelby County Circuit Clerk Court.

“Clerk’s Office” means the office of the Clerk in the Shelby County Courthouse building in Memphis as designated by the Clerk.

“Convenience Fee” is a fee charged in connection with electronic filing that is in addition to regular filing fees. A Convenience Fee will be considered a court cost.

“Court” means the Shelby County Circuit Court and all Judges thereof.

“Document” means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the TRCP and the Local Rules.

“Document Management System” or “DMS” means a computer system owned and in the custody of the Clerk’s Office which maintains all electronic and scanned paper-documents filed in the Court in electronic form.

“E-File” or “E-Filing” means the electronic transmission of original Documents to the Court, and from the Court, for the purposes of E-Filing. For purposes of these rules, the process does not include the filing of faxed documents.

“E-Filer” is an attorney or *pro se litigant* who has a court-issued login and password allowing E-Filing of documents into the DMS.

“E-Filing Rules” means the Shelby County Circuit Court E-Filing Rules.

“E-Filing Website” means a website maintained by the Clerk for the purpose of providing a means for E-Filers to access the DMS and file Documents with the Clerk and Court.

“Local Rules” mean the Rules of the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District.

“Party” or “Parties” means any person, including an individual, executor, administrator or other personal representative, or a corporation, partnership, association or any other legal, governmental or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state who is a party in a case pending in the Court and is represented by an attorney or acting pro se.

“PDF” or “Portable Document Format” means a computer file format developed by Adobe Systems for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents. To be filed electronically, a Document must be converted to a PDF. Converted Documents must contain the “.pdf” file extension.

“Public Access Terminal” means a publicly accessible computer provided by the Clerk for the purposes of allowing E-Filing and viewing of public electronic court records. The public access terminal shall be located in the Clerk’s Office and made available during normal business hours. The Clerk’s Office may also offer printed copies of the electronic court records and apply relevant copying fees as permitted by relevant statutory and court rules.

“System Administrator” means the Shelby County employee designated by the Clerk to administer the DMS and the registration of Authorized Users.

“Terms of Use Agreement” means that agreement established by the Clerk that sets forth the parameters for use of the E-Filing Website by all Authorized Users.

“Traditional Filing” is a process by which a Party files a paper document with the Clerk.

“Transaction Receipt” means an e-mail confirmation that is transmitted to an E-Filer after an E-Filer has submitted a Document to the Clerk to be filed through the E-Filing Website. The Transaction Receipt displays the date and time the Document was submitted by the E-Filer. The Transaction Receipt may serve as the E-Filer’s proof of filing.

“TRCP” means the Tennessee Rules of Civil Procedure.

“User Guide” means the Court’s user guide. All E-Filers should periodically check the Circuit Court website (<http://circuitcourt.shelbycountyttn.gov/>) for updates to the User Guide.

Part 4. — Effect on Existing Local Rules

These E-Filing Rules are adopted as an Appendix to the Local Rules of the Court and do not supersede or replace any other Local Rules of the Court.

Part 5. — Electronic Filing Encouraged Unless Ordered by Court

(a) E-Filing of Documents is strongly encouraged by this Court. Except as provided by subsection (b) below, a Document that can be Traditionally Filed with the Court may be E-Filed.

(b) The Court or the Clerk may exclude Documents and/or certain types of cases from E-Filing. Notice of these excluded Documents and/or cases will be provided on the Court’s E-Filing Website.

Part 6. — Scope of Rules

(a) Except as expressly provided herein, for all new cases filed on or after the effective date of these E-Filing Rules, the Court shall accept as validly filed all Documents that are filed through E-Filing.

(b) The Court and the Clerk may issue, file, and serve notices, orders, and other documents electronically, subject to the provision of these E-Filing Rules.

(c) E-Filers may obtain access to the E-Filing Website either through an internet access point or by using the Clerk's Public Access Terminal located in the Clerk's Office.

Part 7. — Electronic Case File

The Clerk shall maintain the original and official case file in electronic format for those cases filed on or after the effective date. Pending further orders of the Court, the Clerk shall maintain the originals of all Orders entered by the Circuit Court. No Orders shall be destroyed. [Amended by order filed and effective January 17, 2020.]

Compiler's Notes. Order of the court (Shelby County, Local Rules of Practice), dated January 17, 2020, provided: "Pending further orders of the Court, Part 7 of the "E-Filing" Rules shall be modified as set forth above.

Pursuant to this amendment, the Circuit Court Clerk shall maintain the originals of any and all orders entered by the Circuit Court. During this time period, the Circuit Court Clerk shall cease destruction of any and all Court Orders."

Shelby County

Part 8. — Registration Requirements

(a) Persons who are Authorized Users and who desire to electronically file a Document shall register as an E-Filer on the E-Filing website. Upon receipt of a properly executed Terms of Use Agreement, the System Administrator shall assign to the Authorized User a confidential login and password to the E-Filing Website. Additional E-Filers may be added at any time.

(b) E-Filers shall change their E-Filing profile immediately upon any change in firm name, delivery address, phone number, fax number or e-mail address.

(c) The Clerk will provide all Authorized Users with access to a User Guide to assist them in E-Filing.

Part 9. — Time and Effect of E-Filing

Any E-Filed Document shall be considered as filed with the Clerk when the transmission of the entire Document is received by the Clerk. Any Document received by the Clerk before midnight local time of the Clerk's Office shall be deemed filed on that date if such Document otherwise meets all the requirements for filing under the relevant rules of the Court. Upon receipt by the Clerk of an E-Filed Document, the Clerk shall electronically transmit a Transaction Receipt indicating that the E-Filing has been received. The Transaction Receipt shall serve as proof of filing. In the event the Clerk rejects the submitted Document following review, the rejected Document shall not become part of the official Court record and the E-Filer will receive notification of the rejection. E-Filers may be required to re-file the Document to meet necessary filing requirements.

Part 10. — Form of Documents Electronically Filed

(a) Each E-Filed Document shall be uploaded in a PDF. The Document should be formatted in accordance with the applicable Terms of Use Agreement, as well as, the TRCP and Local Rules governing formatting of paper documents, and in such other and further format as the Court may require from time to time.

(b) In addition to the information required by TRCP Rule 11 and any other Local Rule, the Party or attorney signing a Document that is being E-Filed

shall also include an e-mail address, unless the Party or attorney does not maintain an e-mail address and relies on the Public Access Terminal.

Part 11. — Payment of Filing Fees

(a) All E-Filed Documents subject to statutory filing fees shall require payment of such filing fees immediately upon filing unless excused by the Court. These filing fees must be paid with a credit card at the time of E-Filing. Use of the E-Filing Website constitutes E-Filer's consent to process or charge the credit card supplied.

(b) The Clerk may charge E-Filers a Convenience Fee to E-File Documents. This Convenience Fee will be in addition to regular filing fees or other fees.

(c) Refunds due to improper collection will require the E-Filer to contact the Clerk's Office directly. Refunds will not be made in cash.

Part 12. — Signatures

A Document that is required to be signed, verified, notarized, acknowledged, sworn to, or made under oath may be E-Filed only as a scanned image. The original Document shall be maintained by the Party or the attorney E-Filing the Document and shall be made available upon reasonable notice, for inspection by other counsel, the Clerk or the Court. Parties or their attorneys shall retain originals until final disposition of the case and the expiration of all appeal opportunities.

Part 13. — Privacy Issues

E-Filers must be sensitive to confidential and personal information filed publicly, not under seal. E-Filers shall refrain from including, or shall redact as follows where inclusion is necessary, the following personal identifiers from all documents filed publicly with the Clerk, including exhibits thereto, unless required by statute or otherwise ordered by the Court:

(a) *Social Security Numbers.* If a social security number must be included in a document, only the last four digits of that number must be used.

(b) *Dates of Birth.* If an individual's date of birth must be included in a document, only the year must be used.

(c) *Financial account numbers.* If financial account numbers are relevant, only the last four digits of these numbers must be used.

In addition, exercise caution when filing documents that contain the following:

- (1) Personal identifying number, such as a driver's license number
- (2) Medical Records, treatment and diagnosis
- (3) Employment History
- (4) Individual Financial Information
- (5) Proprietary or Trade Secret Information

It is the sole responsibility of E-Filers to be sure that all Documents comply with the rules of this Court requiring redaction of personal identifiers. The Clerk will not review each Document for redaction.

Part 14. — System or User Filing Errors

If the E-Filing does not occur because of:

- (1) an error in the transmission of the Document to the Clerk which was unknown to the sending party,
- (2) a failure to process the electronic Document when received by the Clerk,
- (3) rejection by the Court or Clerk, or

(4) other technical problems experienced by the E-Filer or the Clerk, the Court may, upon satisfactory proof, enter an order permitting the Document to be filed nunc pro tunc to the date the Document was first attempted to be filed electronically and may also extend the date for any response or the period within which any right, duty or other act must be performed.

Part 15. — Effective Date

These rules shall become effective on the 25th day of June, 2012.

**IN THE CRIMINAL COURT OF TENNESSEE
FOR THE 30TH JUDICIAL DISTRICT
AT MEMPHIS
RULES OF PRACTICE AND PROCEDURE**

EFFECTIVE JUNE 30, 2005

TABLE OF CONTENTS

RULE.	RULE.
1. TENNESSEE RULES OF PROFESSIONAL CONDUCT	5. ATTORNEYS
2. FORMER RULES	6. RULES OF CRIMINAL PROCEDURE
3. STYLE OF PLEADINGS AND SETTING OF CASES	7. BAIL BOND COMPANIES
4. ASSIGNMENT OF CRIMINAL CASES	8. COURTROOM DECORUM
	9. WAIVER OF RULES
	10. PRIVATE PROBATION COMPANIES

IT IS ORDERED by the judge of each Division of this Court that the following Rules of Practice and Procedure shall be observed in the conduct of the business of the Court, the same being adopted and ordered spread upon the Minutes of each Division of the Court pursuant to § 16-3-407 of the Tennessee Code Annotated.

RULE 1.

TENNESSEE RULES OF PROFESSIONAL CONDUCT

1.01.

The ethical standards relating to the practice and the administration of law in this Court shall be as set forth by Rule 8 of the Rules of the Tennessee Supreme Court, and shall be cited as: "Tennessee Rules of Professional Conduct." [Effective February 12, 2004.]

RULE 2.

FORMER RULES

2.01.

All former rules of local practice in this Court are hereby abrogated. [Effective February 12, 2004.]

RULE 3.**STYLE OF PLEADINGS AND SETTING OF CASES****3.01.**

All pleadings, including written motions, orders, briefs and other papers submitted to the Court shall conform to Supreme Court Rule 36. The front page shall be captioned: "IN THE CRIMINAL COURT OF TENNESSEE FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS" and shall show the case number, the style, the crime charged, the nature of the paper filed, and the attorney's name, address, and registration number of the Tennessee Board of Professional Responsibility. [Effective May 10, 2002.]

3.02.

All cases shall be set chronologically unless otherwise ordered by the court. Precedence shall be given to the disposal of jail cases. Attorneys for each defendant shall sign their name, firm address, telephone number and registration number of the Tennessee Board of Professional Responsibility, upon the case jacket on becoming counsel. That attorney shall remain counsel of record for the defendant until final disposition of the case, unless excused by the Court for good cause. Final disposition shall not extend to post conviction relief petitions, revocation of suspended sentences, parole matters or matters unrelated to the case. [Effective February 12, 2004.]

RULE 4.**ASSIGNMENT OF CRIMINAL CASES****4.01.**

The following method will be employed by the Criminal Court Clerk's Office for the initial assignment of cases to the ten divisions of Court. The following types of cases will be assigned to the ten divisions of Court in numerical order beginning with Division I through X as the indictments are filed in the Criminal Court Clerk's Office. This procedure shall be used in the following types of cases: Murder in the First Degree (except as provided for in Rule 4.06), Attempt Murder in the First Degree, Conspiracy to Commit First Degree Murder, Second Degree Murder, Aggravated Kidnapping, Especially Aggravated Robbery, Aggravated Rape, Aggravated Arson, Aggravated Robbery, Rape, Aggravated Sexual Battery, Voluntary Manslaughter, Vehicular Homicide, Kidnapping, Robbery, Spousal Rape and Incest. All other cases will be divided equally among the ten divisions of the Court. The Judges, sitting en banc, may designate by separate written Order one or more divisions of Court for the purpose of handling special prosecution cases, with the consent of the Judge of that division of Court so designated. Said cases which have been designated as special prosecution cases by the District Attorney General, using objective criteria approved by the Judges in such Order, shall be assigned by the Criminal Court Clerk to the designated division or divisions of Court as set out in that Order, along with other cases assigned in the regular rotation generally as set out above, in such number that all ten divisions of Court have

an approximate equal number of cases assigned to them each month. All salary petitions filed by the Criminal Court Clerk and the Sheriff will be heard by the Administrative Judge. [Effective October 1, 2001.]

4.02.

Once a case has been assigned, all matters in the case shall be heard in that division.

4.03.

Any motions or petitions requesting hearings in matters that have not been previously assigned to a division of court shall be filed with the Clerk's Office and assigned in a manner prescribed by the judges of this Court. In the event the Clerk's Office is closed, and there is an emergency hearing, the petition will be presented to the Administrative Judge of the Criminal Court. If the Administrative Judge is unavailable then the matter will be presented to any available Judge of this Court.

Petitions for Writ of Habeas Corpus will be filed in the Clerk's Office between the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and immediately assigned to the next Judge in numerical rotation beginning with Division I through X. In the event the Judge, to whom the writ has been assigned, is not available, the next available Judge in rotation shall be assigned to the writ. If there is a conflict of interest involving the Judge to whom the Writ of Habeas Corpus is assigned, the writ shall be assigned to the next Judge in rotation. If there is a request for a Writ of Habeas Corpus after hours on weekends or holidays, the writ is to be handled by the Administrative Judge unless there is a conflict of interest or the Administrative Judge is not available. Then, the writ is to be taken to any available Judge of this Court.

The procedure for assigning cases will be strictly adhered to by the Criminal Court Clerk unless a written order is entered by a Judge or Judges of this Court changing the method or assignment of a case due to an emergency or a conflict of interest.

4.04.

When necessary for the efficient administration of justice, a judge may hear and determine any matter by interchange for another judge without the necessity of transferring the cases from one division to another.

4.05.

The judges may transfer cases among themselves by mutual consent. It is not necessary that the parties or their counsel consent to such transfer. A party requesting a transfer of a case from one division to another division shall obtain an order from the Court to which the case is assigned, transferring the case to another division.

4.06.

When the District Attorney elects to vertically prosecute a defendant charged with Murder First Degree after that defendant has been arrested, but prior to indictment, an assistant from that office may present a copy of the

arrest ticket containing that charge and the defendant's name to the office of the Criminal Court Clerk, and an employee of the Clerk's office will draw randomly from a box containing the numbers one through ten, a number which will be the division of Criminal Court to which that case will be assigned if indicted (regardless of the indicted charges). That number will be not be placed back in the box for further use until all ten numbers have been drawn, at which time all ten numbers will be returned to the box and used for the random assignment of the next ten cases. A log book containing a list of the names of these defendants and the date they are pre-assigned a division will be kept by the clerk, along with the number of the division of court to which each defendant's case is assigned. This log book and assignment information will be made available to all attorneys. Any persons indicted with that defendant as co-defendants for that offense will also be assigned to the same division of court as the original defendant. [Effective October 1, 2008.]

RULE 5.

ATTORNEYS

5.01.

In order to practice law in this Court, an attorney who is a resident of Tennessee must be licensed to practice law in this State, in accordance with Rule 7 of the Tennessee Supreme Court Rules, and must be duly qualified and registered with the State Board of Professional Responsibility, pursuant to Rule 9 of the Rules of the Tennessee Supreme Court.

5.02. Non-resident attorneys.

Non-resident attorneys shall be entitled to practice in a particular case upon compliance with Tennessee Supreme Court Rules 19 and 20.

5.03.

Any attorney or firm appointed to represent an indigent in custody defendant in any General Sessions or Municipal Court in Shelby County, whose charges have been held to the action of the Shelby County Grand Jury but have not yet been indicted, shall be deemed to continue representation of that defendant for the purpose of filing any necessary pre-indictment motions until such time as that defendant is released on bond, is indicted on the pending charges, or has had the warrant holding that defendant in custody dismissed. [Effective June 30, 2005.]

RULE 6.

RULES OF CRIMINAL PROCEDURE

6.01.

The Rules of Criminal Procedure of Tennessee are hereby adopted as the Rules of this Court and shall apply in all criminal proceedings.

6.02.

The Rules of Sentencing Practice and Procedure set forth in Title 40, Chapter 35, Tennessee Code Annotated, are hereby adopted as the Rules of this Court and shall apply, as applicable, in all criminal proceedings.

6.03.

All preliminary motions, including motions to dismiss and motions to suppress evidence, and notice to adversary counsel, required by Rule 12 of the Rules of Criminal Procedure, must be filed in writing not more than twenty (20) days after formal arraignment of the defendant, unless an extension is allowed by the Court for good cause. Upon the filing of a motion to suppress evidence, the defendant shall appear in Court within seventy-two (72) hours and receive an evidentiary hearing date. These evidentiary hearings are to be heard prior to the report date, unless good cause is shown for a continuance. A violation of this requirement and this rule will authorize the Court to enter a summary dismissal of said motion.

6.04.

Notice to adversary counsel required by the Criminal Sentencing Reform Act of 1989 shall be filed with the Court not less than fourteen (14) days before trial. The filing party shall certify that a copy has been furnished to adversary counsel. Hearings on motions will be set by the Court upon request of either party made in open court, or as otherwise directed by the judge of a particular division.

6.05.

Where there is more than one defendant in a case, defense counsel may agree on the order they shall follow. If unable to agree, the order in which the defendants are named in the indictment shall be followed. If each defendant be named by separate indictment, the order shall be followed chronologically. Such order shall be followed in the voir dire, pleas, cross-examination, testimony of defendants and arguments of counsel.

6.06.

The ten divisions of Criminal Court shall convene at 9:00 o'clock a.m. daily, except holidays, Saturdays and Sundays. [Effective April 21, 2003.]

6.07.

All divisions will accept transfer of cases that are ready for immediate commencement of trial.

6.08. **Witnesses —**

Subpoenas for witnesses for the State and defendant shall be issued not less than ten (10) days prior to the date of the trial. No continuance shall be granted based upon an absent witness, unless subpoenaed in conformity with this section.

6.09. **Court Files —**

All papers and records of the Court shall be under the custody and control of the Clerk. No files shall be withdrawn from the Clerk's Office except by the

judge or clerks. No files shall be removed from the courtroom by attorneys, unless with permission of the judge or clerk to make copies necessary for the orderly business of the Court. [Effective January 25, 2000.]

6.10. Record on Appeal —

Transcripts of the evidence will be prepared and filed in accordance with Rule 24 of the Rules of Appellate Procedure of Tennessee.

6.11.

Upon arraigning a defendant, the Court shall set a report date not more than thirty-five (35) days from the arraignment date. A case may be settled at any time prior to the final settlement date. The final settlement date will be a date set by the Court, but no later than thirty (30) days prior to the trial date. After that date no further negotiated settlement will be accepted by the Court without good cause and leave of the Court. [Effective January 31, 2005.]

6.12. Court Recordings —

No attorney or person may listen to, record, or type all or any portion of the record of court proceedings without a written order from the Court. Any person seeking access to court recordings shall file a motion in the division in which the requested record was made setting forth the date or dates requested, the subject matter, and the identity of any witness or witnesses whose testimony is sought. The judge of the division in which the court recording was made shall review the audiotapes and issue an order within 30 days granting, denying or limiting the motion for access. In the event an order is issued denying or limiting access to the requested information, the movant may file a motion with administrative judge to have the decision and the audiotapes reviewed by a three judge panel, composed of two other criminal court judges, appointed by the administrative judge, plus the administrative judge, who will preside. The panel will issue an order affirming, overruling or modifying the initial judge's order within 60 days of the request for review. In the event the judge initially denying the request is the sitting administrative judge, review will be afforded by the administrative judge whose term immediately preceded that of the sitting administrative judge. Appeal of any order of the panel shall be in accordance with the Tennessee Rules of Criminal Procedure. [Effective August 29, 1995.]

RULE 7.

BAIL BOND COMPANIES

7.01. General.

These Court Rules shall be applicable to the Criminal Court of Shelby County, the General Sessions Criminal Court of Shelby County and all other Courts of record in Shelby County exercising criminal court jurisdiction for the administration of all professional bail bond companies in their courts. [Adopted effective March 1, 2015]

7.02. Petitions for Approval of New Company and/or Agents.

A. The Criminal Court Judges, exercising jurisdiction over bail bond companies, shall sit en banc, as needed, in the courtroom of the respective Administrative Judge and shall approve each company who petitions the Court for permission to write bonds in Shelby County. All petitions for approval of a new bonding company or agent shall include the following information:

1. The business name under which the new company or agents will be operating, the street address and the business telephone number for the bonding company office which shall be located in Shelby County.

2. A copy of the state or business license issued for the insurance company.

3. A copy of the power of attorney from the insurance company.

4. The original consent order.

5. A copy of a complete drug screen of the owner and each prospective agent. The drug screens shall be performed by a licensed medical facility within 48 hours of the date of filing the petition for permission to write bonds.

6. A copy of all organizational documents (e.g. corporate charter, partnership agreement) and all other agreements or documents pertaining to the identity of the owners and interest holders in said company, the distribution of profits from the said company, the source of all funds used to establish the company, and the names of those persons who will be personally liable for forfeiture judgments.

7. A statement of whether the bond company, or any of its owners, shareholders or partners, writes bonds in any other jurisdiction. If such company writes bonds in other jurisdictions; the application shall identify those jurisdictions and attach an addendum identifying any surety posted with any other jurisdiction, a copy of the last semi-annual report filed with said other jurisdictions, and a list of all pending conditional forfeitures and final forfeitures in any other jurisdiction.

8. An identification of the funds and source of said funds to be filed with the Clerk to establish the bonding capacity.

9. For all individuals identified in subsection six (6) above, the person(s) must attach an affidavit stating the following:

a. A list of all prior criminal charges (whether resulting in a conviction or not) and the disposition of the charge and the jurisdiction, as well as all other information required by T.C.A. § 40-11-317.

b. A description of all relationships to any other bond company owner, interest holder or agent of any other bail bond company authorized to do business in Shelby County.

c. A statement as to whether such person has ever been an owner, interest holder or agent for any other bail bond company in this State or in any other state.

d. A statement as to whether such person is related by blood or marriage to any person who works for the Clerk of Shelby County Criminal Court or for the Sheriff of Shelby County.

10. A copy of the proposed bail bond contract shall be attached.

11. A statement that the officers/owners of the bonding company and its proposed agents have read and are aware of the requirements of T.C.A. § 40-11-301, et seq. and § 40-11-401, et seq. pertaining to the Rules governing

Professional Bondsmen, the Requirements for Continuing Education and the Rules of this Court governing bonding companies.

12. When a bail bond company desires to change, alter, or modify its authority to write bail bonds on cash or surety, it will be the obligation of the company to file a sworn petition setting out the reasons and necessity for such a hearing. All qualification hearings will be conducted in open Court upon the record.

B. From the effective date of these rules, any person filing an application to open a professional bail bond company in Shelby County is required to post a minimum of Seventy-five Thousand Dollars (\$75,000) in cash with the Criminal Court Clerk, as security for bonds written. There must be prior approval by the Court before a bonding company will be allowed to post any security in addition to the minimum cash deposit. [Adopted effective March 1, 2015]

7.03. Collateral.

A. From the effective date of these rules, any person or company filing a petition for approval to open a professional bail bond company in Shelby County is required to post a minimum of Seventy-Five Thousand Dollars (\$75,000.00) in cash with the Criminal Court Clerk as security for bonds written.

B. Said funds may also be deposited in a Certificate of Deposit in the sum of not less than Seventy-Five Thousand Dollars (\$75,000.00) in the joint names of said bonding company and the Criminal Court Clerk of Shelby County, Tennessee.

C. No real property collateral will be accepted by the Clerk, other than that property presently serving as collateral as of November 1, 2014.

D. The bonding company must obtain prior written approval from the Court before the bonding company will be allowed to post any additional security exceeding the minimum cash deposit to increase its bonding capacity.

E. Any bonding company approved by the Court may write total bonds in an amount equal to ten (10) times the amount of cash security posted with the Criminal Court Clerk. No bonding company shall be allowed to write any one single or blanket bond with any one (1) surety in excess of twenty (20) percent of its available bonding capacity as determined by the Criminal Court Clerk on a weekly basis.

F. Collateral posted as security with the Clerk may not be withdrawn or applied to satisfy a forfeiture judgment except upon notice to the District Attorney General and an Order of the Court. [Adopted effective March 1, 2015]

7.04. Forfeitures.

A. A bonding company shall not be allowed total outstanding forfeitures in the Criminal Courts and the General Sessions Court to exceed more than fifty (50) percent of the amount of collateral posted with the Criminal Court Clerk.

B. The Criminal Court Clerk's Office shall issue a written notice to a bail bond company when said company's liability reaches 90% of its ratio as set out in these rules. If there is a discrepancy between the records of the bail bond company and the records of the Criminal Court Clerk's Office, the records of the Criminal Court Clerk's Office will be presumed correct.

C. If a company writes bail bonds and/or has forfeitures in an amount exceeding the mandated ratios, or has a final forfeiture not paid, the Criminal Court Clerk is ordered to notify immediately and obtain forthwith from any Judge of Criminal Court an order removing and suspending the company from the approved list of bondsmen. The Criminal Court Clerk shall notify the suspended company and all inferior courts of said suspension. The suspension shall remain in effect and the bonding company shall not be allowed to write any additional bail bonds until the company posts the required amount of additional security, or until the forfeitures are within the company's allowable ratios.

D. The bonding company shall remain suspended unless reinstated upon Order from the Court. There shall be a \$100.00 reinstatement fee, together with the costs as a result of suspension.

E. In order to facilitate the determination of the owner of any funds remitted to a bail bond company after having been granted relief pursuant to T.C.A. § 40-11-204 on forfeitures paid in, any monies paid into the Office of the Criminal Court Clerk due on forfeitures taken shall be paid only by case or by a single check written on the account of the surety or its owner. The Criminal Court Clerk shall not accept payment for any forfeiture by personal check written on the account of any other party, nor shall the Clerk take payment by multiple checks drawn on different accounts.

F. These Court Rules shall apply to the General Sessions Criminal Courts of Shelby County for the administration of the professional bail bond companies in the General Sessions Criminal Courts. Bonding companies approved before the effective dates of these Rules shall be in compliance with this Rule by the effective date of **March 1, 2015**. [Adopted effective March 1, 2015]

7.05. Company Changes.

A. The bonding company must notify, in writing, the Criminal Court Clerk of any changes to a bonding company's address or telephone number from that documented in the original qualifying petition. Written notice of any such changes shall be provided to the Clerk's office within ten (10) days of said changes.

B. Any changes to a bonding company's name, ownership, or agents as submitted in the original petition must be presented in writing and approved by order of the Court.

C. Any request for changes to an approved bonding company's bonding capacity or collateral shall be proffered to the Administrative Judge after filing said request with the Criminal Court Clerk with notice to the District Attorney General.

D. Any material changes to the financial statements submitted to the Court must be corrected and filed with the Criminal Court Clerk.

E. Any changes in the employment status of qualified agents must be submitted in writing within ten (10) days of said change and filed with the Clerk. [Adopted effective March 1, 2015]

7.06. Activities of Qualified Bail Agents.

A. All agents shall wear photo identification badges issued by the Criminal Court Clerk while performing their duties as a bail agent. The identification badges will continue to be made by the Shelby County Office of Compliance.

B. It is the duty of each agent to surrender his/her photo identification badge upon termination of their employment. It is the responsibility of the owner of the bond company, or a designee, to retrieve and return said photo identification badge to the Criminal Court Clerk.

C. As mandated by T.C.A. § 40-11-126, no bondsman or bonding company shall solicit business directly or indirectly, in any place immediately surrounding any locations where prisoners are confined, including, but not limited to, the Criminal Justice Complex. No bonding company employee or agent shall initiate contact with a defendant or a defendant's family member to obtain business. Contact with a defendant who is a potential client will be allowed only after the bonding company has been contacted by the defendant or someone authorized to act on behalf of a defendant. All agents or employees of a bonding company shall conduct themselves in accordance with all the rules and orders of the Sheriff and Criminal Courts of Shelby County while performing required duties within such buildings. The penalty for a first violation of this provision is a suspension for not less than ninety (90) days. The penalty for a second violation of this provision is a suspension for not less than six (6) months. After any suspension, the bonding company must petition the Court for reinstatement of the bonding company and/or agent. The penalty for a third or subsequent violation of this provision is termination of the privilege to write bonds in Shelby County.

D. All qualified agents shall be subject to random drug screens as requested by the Court. The cost of said random drug screens shall be the responsibility of said agent. All urine samples shall be divided to provide for confirmation testing. Should an agent test positive for any illegal substance, the agent has forty-eight (48) hours to request that the remaining sample be forwarded to a certified laboratory for re-testing at the agent's expense. Should an agent test positive for any illegal substance, the agent shall be suspended immediately pending a show cause hearing before the Administrative Judge. On the first occasion that an agent tests positive for any illegal substance, the agent shall be suspended for a minimum of six (6) months. After the agent has provided written documentation of successful completion of a drug treatment program, the agent may petition the Court for reinstatement. The credentials and/or qualifications of any treatment program shall be submitted to the Criminal Court Clerk for approval of the Court. Any agent who tests positive for any illegal substance on a second occasion shall be terminated and disqualified from serving as a bond agent and shall not be subject to reinstatement.

E. The Criminal Court Clerk **shall** notify the bonding company in writing of the initial court appearance. The Clerk shall retain proof of such notification. The bonding company shall notify the defendant/principal of each court appearance. [Adopted effective March 1, 2015]

7.07. Premiums.

A. As provided by T.C.A. § 40-11-126, no bonding company or agent shall accept anything of value from a principal or anyone acting on their behalf

except the authorized premium and initiation fee as set out in T.C.A. § 40-11-316 and as described in the bond contract. If any property other than cash (or other negotiable instrument) is accepted for the premium, the agent shall notify the Administrative Judge and the District Attorney General in writing. All funds or negotiable instruments accepted in payment or in satisfaction of the premium and the initiation fee shall be recorded and itemized by the bonding company. A copy of the said record documenting the premium and initiation fee received shall be provided to the defendant, or to the party acting in the defendant's behalf, and shall be maintained as a part of the ordinary daily business records of said company. If funds or negotiable instruments are accepted as collateral, the bonding company shall: (1) deposit such collateral into a separate trust account pending its redemption, (2) identify the account or principal to which the collateral applies, and (3) provide the person providing the collateral with the identity of the institution in which the collateral is held. In the event that a bail bonding company receives funds for a premium or initiation fee and elects not to post the bond for the defendant/principal, any funds received shall be returned immediately to the defendant or the person acting on the defendant's behalf.

B. Every bondsman and/or agent must use a duplicate receipt book to record all payments for premiums. A copy of the receipt must be given to the defendant or the person acting on the defendant's behalf. Receipts must include:

1. A specific description of all property, including cash or checks, received from the defendant or someone acting on the defendant's behalf, and
2. The signature of the defendant or the person acting on his/her behalf tendering the said funds.

C. No bond in the amount of One Hundred Thousand Dollars (\$100,000.00) or more shall be made without a hearing before the Court wherein said case is pending, and notice by the bonding company to the Court and the District Attorney General. The Court shall conduct a hearing to determine compliance with these Rules and the provisions of T.C.A. § 39-11-715 regarding the source of the premium of said bond. Any Criminal Court or General Sessions Court may conduct such hearings and enter such orders, injunctions, restraining orders, prohibitions, or issue any extraordinary process for the purpose of ensuring that any defendant does not use any proceeds directly or indirectly derived from a criminal offense for the purpose of securing an appearance bond or to pay the premium for the bond. Any court may require the defendant or bonding agent to prove in open court the source of such bond or premium before accepting the bond, and the burden of proof shall be upon the party seeking the approval or acceptance of the bond. The source hearings shall be conducted in the Criminal Court or in the General Sessions Court in which the case is pending.

D. Bonding companies shall be prohibited from making or initiating credit bonds on cases where the total bonds for any defendant exceed One Hundred Thousand (\$100,000.00). No additional funds, installment arrangements or unfinished payments in satisfaction of the premium may be received, collected or demanded following release of the defendant/principal from custody for any

bonds for any single defendant in excess of One Hundred Thousand (\$100,000.00), except as authorized by T.C.A. § 40-11-316 or other applicable law. [Adopted effective March 1, 2015]

7.08. Reports and Required Records.

A. It shall be the duty of the bonding company to certify that all bonds are fully completed upon the release of the defendant/principal from custody. All bail bond contracts, written undertakings and bond powers shall:

1. Contain the name, address (including any apartment number) and zip code of the defendant typed or legibly printed thereon. It shall be the obligation of the bonding company to notify the Clerk of any change of address of the defendant.

2. Be signed by the agent making said bond.

3. Have the name of the bonding company boldly and legibly stamped or printed thereon.

4. Identify the property used to pay the premium and initiation fee as well as any other property received as collateral for said bond, and

5. Include a copy of a photo identification of all persons (excluding the defendant/principal) delivering such premiums, fees or collateral to the agent if the bond is One Hundred Thousand (\$100,000.00) or more.

B. Any bonding company authorized by the Shelby County Criminal Court to execute bail or bonds, or bonds securing fines and cost, shall file with the Criminal Court Clerk a semi-annual financial report pursuant to T.C.A. § 40-11-303. The semiannual report shall be an attested filing subject to prosecution for perjury. The semi-annual report shall be prepared by a licensed certified public accountant and verified according to general accounting principles. Such reports shall include, but are not limited to, a listing of:

1. All current and active qualified bonding agents approved for said company.

2. Any outstanding civil performance or costs bonds.

3. All persons having financial or managerial interest in the bonding company.

4. The most recent audit from the bonding company's insurance company. Said audit is required by law to be on file with the Tennessee Department of Commerce and Insurance.

5. A certificate of compliance for each qualified agent for continuing education credits. The certificate must be furnished annually as required by T.C.A. § 40-11-402.

6. A copy of all complete and most recent drug screens of the bond company owner and all agents. The drug screens must have been performed by a licensed medical facility. The owner of a bond company and each agent must furnish proof annually of at least one successful drug screen. The drug screens shall be filed with the first semiannual report.

C. Upon failure of any bonding company to file the required semi-annual report, or any other record or document mandated by statute or these Local Rules, the Criminal Court Clerk shall notify the Administrative Judge who shall suspend and remove the company from the approved list. The Administrative Judge shall issue a written order and immediately terminate the bail

bond company's authority to execute bonds in Shelby County. Thereupon, the bond company shall not be allowed to write any bonds until such time as all the requirements of the semiannual report have been satisfied and the Administrative Judge has reinstated the bonding company in a written order. In the event the bonding company disputes the suspension, the bonding company may petition the Court for a hearing to reconsider the suspension. [Adopted effective March 1, 2015]

7.09. Individual Bonds.

A. Any individual who desires to post a real property bond pursuant to T.C.A. § 40-11-122 shall submit a current title for said real property reflecting any encumbrances thereon. The appraised value/equity of the property must equal one and one-half times the amount of the bond. The bail bond may be secured by real estate situated in this State with nonexempt unencumbered equity owned by the defendant or the defendant's surety worth one and one-half (1.5) times the amount of bail set. If the bail bond is secured by real estate, the defendant or the defendant's surety shall execute a deed of trust conveying the real estate in trust to the clerk who shall immediately file the deed of trust in the office of the register of the county in which the real estate is situated. The costs of preparation of the deed of trust and recordation shall be paid by the defendant. The property owner providing said surety must comply with all regulations as set forth by the Office of the Criminal Court Clerk. If the amount of the bond is One Hundred Thousand (\$100,000.00) or more, the bond cannot be made unless notice is provided to the District Attorney General and a hearing is conducted in open court pursuant to T.C.A. § 39-11-715 regarding the source of the bond.

B. Any individual who desires to deposit a cash bond with the Clerk pursuant to T.C.A. § 40-11-118 shall be notified in writing by the Clerk that such cash deposit shall be returned subject to any fines, court costs or restitution as ordered by the Court. No cash bond may be received in the amount of Ten Thousand (\$10,000.00) or more without notice to the District Attorney General and a hearing is conducted in open court pursuant to T.C.A. § 39-11-715 regarding the source of the bond.

C. Upon release from custody, or at first appearance to booking authorities upon receipt of a citation, the Clerk shall notify the defendant in writing of the initial court appearance. The Clerk shall retain proof of such notification. Each defendant shall provide to the clerk before release on a property or cash bond an address where notification of a court date may be delivered. It shall be the responsibility of the defendant to notify the Clerk of any change of address. [Adopted effective March 1, 2015]

7.10. Suspension of Bonding Company or Agents.

A. Every bonding company acts as an agent of the Court and the conduct of the bonding company constitutes an integral part of the operation of the Court. The Court may impose any limits and conditions necessary to insure the professional standing and reliability of the bonding company. Such measures, if any, shall be made in the public interest to avoid a conflict of interest or an appearance of impropriety on the part of the bonding company. Pursuant to the

provisions of T.C.A. § 40-11-125 and T.C.A. § 40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension or termination of the approval to do business as a bail bond company or agent if it appears to the Court that it is in the best public interest to take such action. For good cause, the Court may issue a restraining order, writ or other process without notice to the company if deemed necessary in the public interest.

B. Pursuant to the provisions of T.C.A. § 40-11-125 and T.C.A. § 40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension or termination of approval for a bondsman to act as an agent for an approved bonding company, if the agent:

1. Has been convicted of a crime of dishonesty, any felony or any alcohol or drug related offense.

2. Fails to submit to a drug screen as requested by the Court or fails to provide proof of successful drug screens as mandated in the semi-annual reports.

3. Tests positive for any illegal substance by a drug screen requested by the Court. The owner of the bonding company must notify the Court immediately of any failed drug screens by any owner or agent of the bonding company.

4. Authorized a bond which has a final judgment of forfeiture entered against the bonding company that remains unsatisfied. If a bonding company fails to satisfy payment of a final judgment, the bonding company shall be suspended immediately from the list of qualified bonding companies. The bonding company shall remain suspended unless reinstated upon Order from the Court. There shall be a \$100.00 reinstatement fee, together with the costs as a result of such suspension.

5. Has failed to comply with any local rules.

6. Is guilty of any unprofessional conduct that includes, but is not limited to:

a. Loitering about the jail or court premises and within prohibited areas to solicit business.

b. Suggesting or advising the employment of, or otherwise referring, any particular attorney to represent a defendant.

c. Paying a fee or giving or promising anything of value to any Clerk of the Court, jailer, police officer, peace officer, committing Magistrate, or any other person who has the power to arrest or hold in custody, or to any public official or public employee to secure a bond and/or a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

d. Paying a fee or rebate or giving anything of value to an attorney in bail bond matters, except in the legal representation or any action pertaining to the bail bond company or action.

e. Surrendering a principal without good cause.

f. Accepting anything of value from a principal except the premium provided, however, the bondsman shall be allowed to collect collateral, security or other indemnity from the principal that shall be returned upon final termination of liability on the bond where such collateral, security or other indemnity required by the bondsman is reasonable in relation to the amount of the bond and where the said bondsman accepting such collateral delivers a written receipt for the same which receipt describes in detail the collateral received and the term of redemption.

g. Receiving anything of value as payment for a premium or collateral on credit bonds on cases where the total bonds for any defendant exceed One Hundred Thousand (\$100,000.00) after the defendant/principal is released from custody as prohibited by these Rules, except as authorized under Rule 7.07(D). [Adopted effective March 1, 2015]

7.11. **Amendments.**

Bonding companies approved before the effective dates of these Rules shall be in compliance with this Rule by the effective date of **March 1, 2015**. These Rules may be amended from time to time by the Criminal Court Judges. Upon amendment, the Criminal Court Clerk shall notify all approved bonding companies in Shelby County, by certified mail, return receipt requested, or by personal delivery with a signed receipt for the same. Upon receipt of notice, all bonding companies shall comply with any said amendments. [Adopted effective March 1, 2015]

RULE 8.

COURTROOM DECORUM

8.01.

It is essential to an orderly administration of criminal justice and to assure the accused of receiving a fair, impartial and constitutional trial, that the decorum of all persons in the courtroom be maintained in a manner that will promote and protect the highest standards of the judicial process. It is ultimately the authority and responsibility of the Trial Judge which must be exercised to maintain the atmosphere appropriate for a fair, rational and civilized determination of the issues and the governance of the conduct of all persons in the courtroom, including the attorneys. To effectuate this purpose, the following rules regulating the decorum of the courtroom are hereby adopted.

8.02. **Flag —**

Flags of the United States and the State of Tennessee shall be displayed on the bench of the Court. The United States flag shall be to the Judge's right side, and the flag of Tennessee shall be displayed to the left side.

8.03. **Opening and Closing of Court —**

The Court shall be formally opened each day upon which the Court's business is transacted as follows:

As the Judge enters the Courtroom, the bailiff shall require all present to rise and remain standing. The bailiff shall say:

"Hear ye, hear ye, this Honorable Division _____, of the Criminal Court of Tennessee, 30th Judicial District, at Memphis, is now open for transaction of business pursuant to adjournment. All persons having business with this Court draw near, give attention, and ye shall be heard. Be seated, please. No talking in the courtroom."

8.04.

The space within the rail of the courtroom is reserved for litigants actually engaged in trial and for attorneys of the local Bar.

8.05.

Where space is available and with permission of the Court, the defendant may sit at counsel table with his or her attorney.

8.06.

Counsel will stand when examining or cross-examining witnesses or when addressing the Court, or the Jury, unless excused by the Court.

8.07.

Counsel shall not place or leave upon the tables of the courtroom any hats, newspapers, magazines or any other object nor shall they engage in any conversation, consultation or other activity that may disturb the orderly procedure while Court is in session.

8.08.

Counsel shall not engage in repartee or colloquy and shall address their remarks to the Court instead of each other.

8.09.

In making an objection to the testimony, counsel shall state only the legal grounds therefor and shall not attempt to argue said objections in the presence of the Jury, except with permission of the Court.

8.10.

The argument of counsel to the Jury shall be confined to the issues in the case and supported by the evidence. Counsel may suggest such facts and circumstances as have been established by evidence or by knowledge and the reasonable inferences to be drawn therefrom. Argument must be addressed to the entire Jury instead of to one or more individual jurors, as contemplated by the Canons of Professional Responsibility that forbids counsel to curry favor with juror.

RULE 9.

WAIVER OF RULES

Whenever in a particular instance, in the opinion of the trial judge, for good cause shown, and justice requiring, these rules may be waived.

RULE 10.

PRIVATE PROBATION COMPANIES

10.01.

Section 40-35-302 of the Tennessee Code Annotated provides for the establishment of private probation companies to supervise defendants convicted of misdemeanors in the Criminal Courts.

This section establishes the minimum standards for the chief executive officer and employees of private probation companies who are responsible for providing supervision to persons placed on probation by the Criminal Courts. In addition, this section provides for the posting of performance surety bonds and a report on each employee's criminal record.

Subsection (E) sets out the required information for the application form for private probation companies.

Subsection (D) requires that these forms shall be filed with all of the Criminal Court Judges in Judicial District in which the entity proposes to provide misdemeanor probation services.

The purpose of this rule is to specify a uniform procedure for proposed private misdemeanor probation companies to apply for authorization to supervise probationers for the Criminal Courts of the 30th Judicial District.

The entity proposing to provide misdemeanor probation services for the Criminal Courts shall file an application with the Criminal Court Clerk's Office. This application shall conform with the requirements as set out in § 40-35-302 of the Tennessee Code Annotated. The Clerk of the Court shall immediately forward the application to the Administrative Judge of the Criminal Courts who will hold an En Banc Hearing to determine if the applicant is properly qualified to supervise probationers for the Criminal Courts of the 30th Judicial District.

The private companies that have previously been authorized to supervise probationers by the Criminal Courts shall have 60 days from the effective date of this rule to file a new application with the Court and may continue to operate until their application has been reviewed by all the Judges of this Court. [Effective April 10, 2000.]

RULES OF PRACTICE OF THE SHELBY COUNTY COURT OF GENERAL SESSIONS CIVIL DIVISION

Amended August 7, 2000

RULE.

1. [COPIES OF THE RULES]
2. [PLEADINGS]
3. [FILING SUMMONS]
4. [MOTIONS TO SET PAYMENTS]
5. [CONSENT JUDGMENTS]
6. [CONTINUANCES]
7. [OUT OF STATE COUNSEL]
8. [BAILIFF AND CLERK IN ATTENDANCE]
9. [COURT SCHEDULE]

RULE.

10. [DAILY CALENDAR POSTED]
11. [COURTROOM DECORUM]
12. [TRANSFER OF CONTESTED CASES]
13. [IMMEDIATE WRITS OF POSSESSION]
14. [DROPPED CASES AND NOTICE OF
CASE SETTING]
15. [PAUPER'S OATH AND AFFIDAVIT OF
INDIGENCE]
A. FORMS

Shelby County

Compiler's Notes. The bracketed rule headings were inserted by the compiler.

RULE 1.

[COPIES OF THE RULES]

Copies of these rules shall be made available in the office of the Clerk of General Sessions Court, Room 106, Shelby County Courthouse. All amendments to these rules shall be filed with the clerk.

RULE 2.

[PLEADINGS]

All written pleadings, orders and judgments shall be on legal-size paper and backed with the style of the cause. Each attorney, whether for the plaintiff or defendant, shall place his/her name, telephone number and Tennessee Board of Professional Responsibility registration number on the jacket and on all pleadings of each case in which he/she is an attorney.

RULE 3.

[FILING SUMMONS]

All summons filed with the Clerk shall be in duplicate and the deputy sheriff serving the summons shall fix the date and hour the case will be set for trial and deliver a copy of the summons to the defendant when personal service of process is required.

RULE 4.**[MOTIONS TO SET PAYMENTS]**

All motions to set installment payments and to stay execution by garnishment will be heard no less than five (5) days following their filing. All such motions must be completed in duplicate by the defendant or defendant's attorney, signed by the defendant and notarized before filing with the clerk. The clerk will mail a copy of the motion to the other party, advising of the date of hearing.

RULE 5.**[CONSENT JUDGMENTS]**

All consent judgments must be in writing, bear the date of execution and be signed by the parties to be bound, unless:

(a) the party against whom the judgment is to be entered, or the party's attorney, if represented, is present in court,

OR

(b) the announcement is made in open court by the attorney for the plaintiff or defendant where both parties are represented by counsel.

RULE 6.**[CONTINUANCES]**

At the first setting of a case, a continuance shall be granted as a matter of right to any party appearing and requesting same. After the first setting of a case, no case shall be continued except for legal cause shown or by consent of all parties. When a case is dismissed without a trial for want of prosecution, said dismissal shall be without prejudice to either party's right to bring it again.

RULE 7.**[OUT OF STATE COUNSEL]**

A litigant, unless representing himself, must be represented by an attorney-at-law who holds a Tennessee law license. Out-of-state attorneys who are not licensed in this state, must associate local counsel in order to practice in this court. The name, address and Board of Professional Responsibility registration number of the local associated counsel must be shown on all pleadings filed in this court. Local associated counsel must actively participate in any litigation in which he is so associated.

RULE 8.**[BAILIFF AND CLERK IN ATTENDANCE]**

Each division of this court shall have a deputy sheriff and a deputy clerk in attendance at all times while it is in session unless excused by the court.

RULE 9.**[COURT SCHEDULE]**

Divisions I through VI of the Shelby County Court of General Sessions shall convene at 10:00 A.M., adjourn for lunch at 12:30 P.M., reconvene at 1:30 P.M. and adjourn at 4:30 P.M.

RULE 10.**[DAILY CALENDAR POSTED]**

The clerk of this court shall post the entire daily calendar for all divisions in a prominent place in the clerk's office or adjacent thereto; and shall also post each division's daily calendar adjacent to the courtroom in which the cases are to be heard.

RULE 11.**[COURTROOM DECORUM]**

The following standards of courtroom decorum and procedure shall be maintained:

(a) All judges shall wear judicial robes during sessions of their courts, except when, in the discretion of a judge, a matter before a court is of such a nature as justifies an informal hearing.

(b) All persons in a courtroom shall stand while the court is being opened and while the court is being adjourned.

(c) All persons shall rise at all times when addressing the court.

(d) All persons shall remove top coats, hats or raincoats upon entering a courtroom.

(e) All orders, judgments and decrees shall be passed to the court through court attendants, and lawyers may not approach the bench from the bar except when directed by the judges.

(f) Smoking will not be permitted in any courtroom.

(g) All lawyers and court attendants must be appropriately dressed.

(h) Upon a judge entering a courtroom preparatory to formal opening of court, the sheriff shall call the courtroom to order, directing all in attendance upon court to stand, and, upon being so instructed by the court, will open court in substantially the manner following:

"Hear Ye! Hear Ye! This honorable court is now open for the transaction of business pursuant to adjournment; all persons having business before this court draw near, give attention, and ye shall be heard. Be seated, please."

Thereupon, the judge will take his seat upon the bench and those in the courtroom will be seated.

(i) Upon a judge instructing the sheriff to adjourn court for the day, the sheriff will direct all in attendance upon court to stand, as will the judge, and will adjourn court in substantially the manner following:

"This court will now stand adjourned until tomorrow morning at ____ o'clock (or until a day certain)."

(j) Sheriffs in attendance upon courts will be charged with the responsibility of requiring compliance with these standards of courtroom decorum.

RULE 12.**[TRANSFER OF CONTESTED CASES]**

In an effort to facilitate the trial of contested matters in the General Sessions Civil Divisions, contested cases shall be referred to the General Sessions Civil Division Court Coordinator for trial in the next available division of court. The oldest cases, based on the filing date, shall be assigned for trial in the first available division of court.

RULE 13.**[IMMEDIATE WRITS OF POSSESSION]**

Litigants seeking immediate possession of personal property under Tenn. Code Ann. Section 29-30-106(1)(B) in actions to recover property must include an affidavit setting out the specific facts justifying extraordinary relief.

RULE 14.**[DROPPED CASES AND NOTICE OF CASE SETTING]**

(a) Cases that have been dropped from the court's calendar may be placed back on the calendar at any time by

(1) consent of all the parties (evidenced in writing by any unrepresented parties) and approval by a judge

OR

(2) by filing with the General Sessions Clerk a "Notice of Case Setting". Said notice shall give the party(s) being notified of the setting a minimum of two (2) weeks notice. Said notice shall be signed by the party requesting the setting or by that party's attorney.

(b) The "Notice of Case Setting" shall be in the form as set out in Appendix.

RULE 15.**[PAUPER'S OATH AND AFFIDAVIT OF INDIGENCY]**

(a) Actions filed pursuant to Tenn. Code Ann. Section 20-12-127 and 20-12-130(a) must be filed with an accompanying "Affidavit of Indigency".

(b) The "Affidavit of Indigency" shall be in the form as set out in Appendix.

APPENDIX A —FORMS

NOTICE OF CASE SETTING

Court of General Sessions
140 Adams, Room 106
Memphis, Tennessee 38103

RE: _____ VS _____ DOCKET NO.: _____
Plaintiff Defendant

Please reset the above case which was previously dropped from the calendar to the _____ day of _____, 20____ at _____ o'clock ____ M.

I have given the plaintiff/defendant(s) a minimum of two (2) weeks notice by sending a copy of this letter to the following address:

Attorney for _____

CERTIFICATE OF MAILING

As the _____'s attorney I hereby certify that a true and exact copy of the foregoing notice has been served upon the opposing party or upon the opposing party's attorney by this date placing the same in a properly addressed, stamped envelope and depositing for delivery with the United States Postal Service.

This _____ day of _____, 20____.

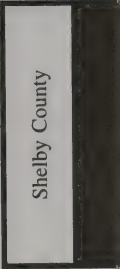
Attorney for _____

IN THE SHELBY COUNTY COURT OF GENERAL SESSIONS

PLAINTIFF

vs. CASE NO. _____

DEFENDANT



UNIFORM CIVIL AFFIDAVIT OF INDIGENCE

I, _____, having been duly sworn according to law, make oath that because of my poverty, I am unable to bear the expense of this cause and that I am justly entitled to the relief sought to the best of my belief. The following facts support my poverty.

- Shelby County
1. Full Name: _____

2. Address: _____

3. Telephone Number: () _____

4. Date of Birth: _____

5. Names and Ages of All Dependents:

_____	Relationship _____
_____	Relationship _____
_____	Relationship _____
_____	Relationship _____

6. I am employed by: _____
My employer's address is: _____
My employer's telephone number is: _____

7. My present weekly income after federal income and social security taxes are deducted is: \$ _____ per week or \$ _____ per month.

8. I am not employed, but receive or expect to receive money from the following sources:

AFDC	\$ _____	per month beginning _____
SSI	\$ _____	per month beginning _____
Retirement	\$ _____	per month beginning _____
Disability	\$ _____	per month beginning _____
Unemployment	\$ _____	per month beginning _____
Worker's compensation	\$ _____	per month beginning _____

9. My expenses are:

Rent/House Payment	\$ _____	per month
Groceries	\$ _____	per month
Electricity	\$ _____	per month
Water	\$ _____	per month
Gas	\$ _____	per month
Transportation	\$ _____	per month
Medical	\$ _____	per month
Telephone	\$ _____	per month
School supplies	\$ _____	per month
Clothing	\$ _____	per month
Child care	\$ _____	per month
or Court-Ordered Child Support		
Other	\$ _____	per month

10. Assets:

Automobile	\$ _____	fair market rule
Checking/Savings Acct.	\$ _____	
House	\$ _____	(fair market value)
Other	\$ _____	

11. My debts are:
Amount Owed & To Whom

I hereby declare under the penalty of Perjury that the foregoing answers are true, correct and complete and that I am financially unable to pay the costs of this action.

x _____
PLAINTIFF

ORDER ALLOWING FILING ON PAUPER'S OATH

It appears upon the Affidavit of Indigence filed in this cause and after due inquiry made that the Plaintiff is an indigent person and is qualified to file this case on a pauper's oath.

It is so ordered this the _____ day of _____, 20____

JUDGE

DETERMINATION OF NONINDIGENCE

It appears upon the Affidavit of Indigence filed in this cause and after due inquiry made that the Plaintiff is not an indigent person because

IT IS SO ORDERED AND ADJUDGED that the Plaintiff does not qualify for filing this case on a pauper's oath.

This the _____ day of _____, 20____

JUDGE

NOTICE: If the judge determines that based upon your affidavit you are not eligible to proceed under a pauper's oath, you have the right to a hearing before the judge or, in those cases that can be appealed to Circuit Court, a hearing before the circuit court judge.

Shelby County

**RULES OF PRACTICE OF THE SHELBY COUNTY
COURT OF GENERAL SESSIONS CRIMINAL DIVISION**

EFFECTIVE JUNE 27, 2000

TABLE OF CONTENTS

INTRODUCTORY STATEMENT	RULE.
RULE.	9. PROCEDURES FOR USE OF ELEC- TRONIC SIGNATURES
1. SESSIONS OF COURT	10. PROCEEDINGS RELATIVE TO THE IS- SUANCE OF EX PARTE ORDERS OF PROTECTION AND MATTERS ATTEN- DANT THERETO VIA COMPUTER, VID- EOCONFERENCING OR OTHER ELEC- TRONIC MEANS
2. DOCKETS	11. PROCEDURES FOR USE OF ELEC- TRONIC ARREST WARRANTS IN DO- MESTIC VIOLENCE CASES
3. COURTROOM DECORUM AND PROCE- DURE	
4. ATTORNEYS AND REPRESENTATION	
5. TRANSFER OF CASES	
6. FELONY BONDS	
7. PRIVATE PROBATION COMPANIES	
8. JUDICIAL COMMISSIONERS	

Compiler's Notes. These rules, effective June 27, 2000, supersede the previously adopted local rules for the Juvenile Court of Shelby County.

INTRODUCTORY STATEMENT

For the purpose of providing uniformity of procedure in all the Divisions of the General Sessions Criminal Courts, it is ordered by the Judge of each Division of said Court that the following Rules of Practice and Procedure shall be observed in the conduct of business of the Court, the same being adopted by each Division of the Court, by virtue of the power vested in said Judges by Section 16-3-407, Tennessee Code Annotated.

RULE 1.

SESSIONS OF COURT

The General Sessions Criminal Courts shall convene at 9:00 a.m. daily, except holidays and Saturdays and Sundays. There may also be a 1:30 p.m. session as needed.

RULE 2.

DOCKETS

The dockets for all Divisions of Court shall be posted daily in a prominent place outside the General Sessions Criminal Court Clerk's Office. All Courts open at 9:00 am for the daily dockets.

Shelby County

RULE 3.

COURTROOM DECORUM AND PROCEDURE

Upon a Judge entering a courtroom preparatory to the formal opening of Court, the Sheriff will call the courtroom to order, directing all in attendance to stand, and upon being so instructed by the Court, will open Court by saying the following:

“Hear Ye, hear ye, this Honorable Division _____ of the General Sessions Criminal Courts, is now open for the transaction of business pursuant to adjournment. All persons having business with the Court, draw near, give attention, and ye shall be heard. The Honorable _____ presiding. Be seated, please. No talking in the courtroom.”

Upon the Judge instructing the Sheriff to call a recess or adjourn court for the day, the Sheriff shall direct all in attendance to stand, as will the Judge, and will say one of the following:

“This Honorable Court stands in recess until _____.”

“This Honorable Court now stands adjourned until tomorrow morning at _____ o'clock (or until a day certain).”

All Judges will wear judicial robes during all sessions of their courts.

All lawyers and court attendants will be appropriately attired while in attendance upon the Court.

There will be no smoking or holding of cigars, pipes, or cigarettes in the hand or mouth while the court is in session. No food or drink shall be brought into the courtroom.

The space within the rail of the courtroom is reserved for lawyers and law enforcement personnel unless otherwise authorized by the Court.

Defendants must appear in Court each setting unless the Court specifically waives their presence. Defendants should be appropriately attired.

Sheriffs in attendance upon Courts will be charged with the responsibility of requiring compliance with these rules which relate to standards of courtroom conduct and decorum.

RULE 4.

ATTORNEYS AND REPRESENTATION

All attorneys shall conduct themselves in accordance with the Memphis Bar Association Guidelines for Professional Courtesy and Conduct which shall be made a part of these Rules as if set out verbatim herein.

In order to practice law in this Court, an attorney who is a resident of Tennessee must be licensed to practice law in this State, in accordance with Rule 7 of the Tennessee Supreme Court Rules, and must be duly qualified and registered with the State Board of Professional Responsibility, pursuant to Rule 9 of the Tennessee Supreme Court. A non-resident attorney, who is not otherwise in compliance with the above Rules, must associate an attorney of this State who is in compliance with said rule in any case pending before the court, and will be allowed as a matter of courtesy to appear in such cases in

which he may be thus employed without procuring a license, when introduced to the Court by an attorney in good standing. Such non-resident attorney must be admitted to practice and be in good standing in the jurisdiction of his residence.

New attorneys must be introduced to each Division of Court by a licensed attorney. Once the new attorney has been introduced in all divisions, then the name and disciplinary number of the new attorney shall be enrolled in a well-bound book kept in the General Sessions Court Clerk's Office.

Attorneys for each defendant shall print their name, firm address, telephone number, registration number of the Board of Professional Responsibility, and the date upon the case jacket on becoming counsel. Such attorney shall remain counsel of record for that defendant until disposition of the case, unless excused by the Court for good cause. Any attorney requesting permission to withdraw from a case shall make such application in open court and shall furnish written notice to the defendant. If for good cause shown the court grants the motion to withdraw, Counsel shall forthwith submit a written order to the Court.

Attorneys and defendants, where not represented by counsel, shall address the court only after having been granted permission to approach the Bench. Attorneys shall announce the docket number of a given case to the Court when addressing the court about a case, as well as have any necessary waiver or forms fully prepared and executed prior to addressing the Court.

Attorneys must have in Court the jacket of a given case when making any motion to the Court about a forfeiture, continuance, recall of a warrant, issuance of a restricted driver's license, change in mittimus, or any other matter concerning a case not currently on the court's docket.

All papers and records of the court shall be under the custody and control of the Clerk. Jackets may be used by the attorney in the courtroom but shall not be taken beyond the rail.

Counselors shall not place or leave upon the tables of the courtroom any hats, newspapers, or magazines, nor shall they engage in any conversation, consultation or other activity that may disturb the orderly procedure while Court is in session. Attorneys shall not confer with their clients in the courtroom while the court is in session.

Attorneys and all litigants shall observe the "Quiet Court in Session" signs in the areas outside each courtroom and shall conduct their conversation in a manner so as not to disturb the proceedings in the courtrooms.

Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the Judge. A copy of the written motion shall be filed with the General Sessions Judges' Secretary and the General Sessions Court Clerk no later than seven (7) days before the hearing.

Subpoena for witnesses for the state and defendant shall be issued not less than seven (7) days prior to the date of the trial. No continuance shall be granted based upon an absent witness, unless subpoenaed in conformity with this order. [Amended by order effective July 1, 2015.]

RULE 5.**TRANSFER OF CASES**

Cases shall be transferred for good cause from one division to another only upon written order signed by the Judges of both the transferring Court and the accepting Court.

RULE 6.**FELONY BONDS**

All felony bonds will be set in open Court by the Judge hearing felony cases or by the Judicial Magistrates.

During the day following the adjournment of the Felony Court and on weekends and holidays the felony Judge or Judicial Magistrates will set bonds by telephone for all defendants charged with felonies, whether the defendants are represented by attorneys or not. Attorneys need not call the felony Judge, or any other Judge or Magistrate, inasmuch as background information as to the defendants will be furnished by the Shelby County Pre-Trial Services. If an attorney wishes to provide information concerning the setting of bond for the attorney's client, the attorney should provide such information to the Pre-Trial Services personnel.

RULE 7.**PRIVATE PROBATION COMPANIES**

The general sessions courts have the authority to order a defendant placed on probation to be supervised by any public or private agency, program or association which has been established for the purpose of supervising defendants convicted of misdemeanors. The court is encouraged to consider any public or private agency, program or association for supervision prior to ordering the department of correction to supervise the defendant.

The following minimum education standards are required for certain employees of an entity established for the purpose of supervising misdemeanor probationers.

The chief executive officer of an entity offering probation supervision shall have a bachelor's degree from an accredited university in any of the following fields: criminal justice, administration, social work, or the behavioral sciences and two years of experience in criminal justice or social work; provide, that four years of professional administrative experience with an organization providing services in criminal justice or social work may be substituted for the bachelor's degree.

An employee responsible for providing probation supervision and employed by an entity shall have at least four years of experience in a criminal justice or a social services agency providing counseling services or shall have a bachelor's degree and/or associate's degree from an accredited college or university in any of the following fields; criminal justice, administration, social work, or the behavioral sciences.

A person employed on July 1, 1997, by an entity established for the purpose of supervising misdemeanor probationers shall have four years from such date

to comply with the minimum education requirements established by this section.

Any entity providing probation supervisory services shall post a performance surety bond in an amount equal to the amount of coverage required to be provided under the Governmental Tort Liability Act. The bond shall provide recourse for the county or municipality in the event of nonperformance, default or breach of contract by the contracting entity and cover claims that may arise based on such entity's nonperformance. A copy of such bond shall be filed with the clerk of General Sessions Criminal.

Any entity providing or proposing to provide misdemeanor probation services shall investigate the criminal record for each employee and shall include in its application form any criminal conviction of each employee.

Any entity providing or proposing to provide misdemeanor probation services shall provide an application form to all of the general session's criminal court judges.

Any entity providing or proposing to provide misdemeanor probation services shall file an application form with the office of the clerk of general sessions, which contains the following information:

- (a) The title of the entity;
- (b) Its form of business organization;
- (c) The office and mailing address of the entity;
- (d) The names of the employees who will provide services and their position with the entity, and their credentials;
- (e) A sworn statement that the credentials of all employees meet the minimum standards;
- (f) A sworn statement that a criminal record search has been conducted and, if a criminal conviction has been discovered, the name of the employee and the criminal conviction;
- (g) A credit history of the entity including any judgments or lawsuits;
- (h) A description of the services to be provided by the entity and the fee structure for the services to be provided.

The application shall contain an affidavit filed under penalties of perjury that it is complete and accurate and complies with the requirements set forth. The application and the affidavit shall be filed with the clerk of the general session's criminal courts.

The entity shall also file a quarterly report with the general session's criminal court clerk's office, which shall include the following information:

- (a) The caseload for the entity;
- (b) The number of contact hours with offenders;
- (c) The services provided;
- (d) The number of filings for probation revocation and their dispositions;
- (e) A financial statement including administrative costs and service costs;
- (f) Contributions, if any, to the criminal injuries compensation fund.

RULE 8.

JUDICIAL COMMISSIONERS

Judicial Commissioners duties shall include, but not be limited to, the following:

• Issuance of search warrants and felony arrest warrants upon a finding of probable cause and pursuant to requests from on-duty law enforcement officers and in accordance with the procedures outlined in chapters 5 and 6 of title 40 of Tennessee Code Annotated.

• Issuance of mittimus following compliance with the procedures prescribed by 40-5-103 of Tennessee Code Annotated.

• The appointing of attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county.

• The setting and approving of bonds and the release on recognizance of defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county.

• Issuance of injunctions and other appropriate orders as designated by the general sessions judges in cases of alleged domestic violence.

• Signing of seizure warrants.

• Conducting first appearances.

• Conducting proceedings relative to the issuance of extended orders of protection and all proceeding and matters attendant thereto.

• Any other duties assigned by the General Sessions Criminal Court Judges that are not inconsistent with the law.

RULE 9.

PROCEDURES FOR USE OF ELECTRONIC SIGNATURES

(a) Pursuant to Tenn. Code. Ann. § 16-1-115, the procedures for the use of electronic signatures in the signing of pleadings, court orders, judgment orders, affidavits of complaint, arrest warrants, mittimus or other court documents shall be as provided by this Rule.

(b) Electronic signatures are permitted and shall have the same force and effect as an original handwritten signature in the signing of:

(1) Any application for an ex parte order of protection;

(2) Any ex parte order of protection;

(3) Any other document prepared or issued in application for an ex parte order of protection or generated in response to such application;

(4) As otherwise expressly permitted by these Rules.

RULE 10.

PROCEEDINGS RELATIVE TO THE ISSUANCE OF EX PARTE ORDERS OF PROTECTION AND MATTERS ATTENDANT THERETO VIA COMPUTER, VIDEOCONFERENCING OR OTHER ELECTRONIC MEANS

The procedure in proceedings relative to the issuance of ex parte orders of protection and matters attendant thereto where the victim, complaining party or grievant appears before the judge or judicial commissioner of the General Sessions Criminal Court via computer, videoconferencing or other electronic means from the Shelby County Family Safety Center (FSN), or another remote location designated by the FSN, with the approval of the general sessions criminal court judges, shall be as follows:

(a) A victim of domestic violence may at any time submit a sworn application for an ex parte order of protection via computer or other electronic means with a secure connection or link to the Judge or Judicial Commissioner for communication.

(b) When a Judicial Commissioner is available for immediate communication, a victim of domestic violence may submit a sworn application for an ex parte order of protection via a videoconference with a secure live connection or link to the Judicial Commissioner for communication.

(c) The application submitted by the victim shall contain a statement sworn to and signed by the victim by means of electronic signature in accordance with Rule 9, or sworn to before a citizen's dispute agent deputized as a clerk of the General Sessions Court Criminal Division or who is otherwise commissioned as a notary in the State of Tennessee.

(d) Where there is good cause shown the Judge or Judicial Commissioner shall approve and issue the ex parte order of protection in accordance with Tenn. Code Ann. § 36-3-605. Pursuant to Rule 9, the signature of the Judge or Judicial Commissioner affixed electronically or inscribed on an ex parte order of protection or sworn statement transmitted to the Judge or Judicial Commissioner electronically via computer or other electronic means shall be deemed an original and shall have the same force and effect as a written signature inscribed thereon.

RULE 11.

PROCEDURES FOR USE OF ELECTRONIC ARREST WARRANTS IN DOMESTIC VIOLENCE CASES

Pursuant to Tenn. Code. Ann. § 16-1-115, use of electronic arrest warrants is authorized only in the General Sessions Criminal Court Division X in domestic violence cases in accordance with this Rule. An electronic arrest warrant issued upon the electronic signature of the officer who appears before the judge or judicial commissioner has the same force and effect as an arrest warrant issued upon written signatures in affidavits of complaint and arrest warrants.

**RULES REGULATING PRACTICE AND PROCEDURE
IN THE JUVENILE COURT OF MEMPHIS AND
SHELBY COUNTY, TENNESSEE**

ADOPTED AND EFFECTIVE OCTOBER 1, 2008

TABLE OF CONTENTS

RULE.	RULE.
1. SCOPE AND PURPOSE	16. MEDIATION AND PARENTING PLANS
2. COURTROOM DECORUM	17. VISITATION — CUSTODY — PATER- NITY PETITIONS
3. OPENING AND ADJOURNMENT OF COURT	18. SCHEDULING OF HEARINGS AND CONTINUANCES
4. SESSIONS	19. PRELIMINARY HEARINGS IN DEPEND- ENT AND NEGLECTED CASES
5. OFFICE HOURS	20. MOTIONS — GENERALLY AND FOR AP- POINTMENT OF ATTORNEY
6. PLEADINGS	21. CERTIFICATE OF READINESS — WIT- NESS AND EXHIBIT LISTS
7. SUBPOENAS	22. RESTITUTION
8. ATTORNEYS	23. CHILD AND FAMILY TEAM NON-DCS AND NON-PCO CASES
9. CONDUCT OF TRIALS	24. AGREED ORDERS IN CIVIL MATTERS
10. DISCOVERY	25. RESTRAINING ORDERS
11. ERROR AND EXCEPTIONS	APPENDIX
12. PETITIONS FOR REHEARING HEARD BY THE PRESIDING JUDGE	
13. REHEARINGS OF MATTERS FIRST HEARD BY A REFEREE	
14. ORDERS AND DECREES	
15. APPEALS	

Compiler's Notes. These Local Rules of the Juvenile Court Memphis and Shelby County were adopted and entered on the minutes of the Court on October 1, 2008.

RULE 1.

SCOPE AND PURPOSE

These rules and the Tennessee Rules of Juvenile Procedure shall govern the practice and procedure in the Juvenile Court of Memphis and Shelby County. They are intended to provide for the speedy and just determination of every proceeding, and in juvenile proceedings they shall at all times be enforced and construed beneficially for the remedial purposes embraced in Title 37 of the Tennessee Code Annotated. In the event of any apparent conflict, the Tennessee Rules of Juvenile Procedure shall prevail.

RULE 2.

COURTROOM DECORUM

All persons in the Courtroom will stand while the Court is being opened and also while the Court is being adjourned. All orders, judgments, and decrees will be handed to Court through the Court attendants and lawyers will not

Shelby County

approach the bench from the bar except when directed by the Judge. There will be no smoking or chewing of gum in the Courtroom and all lawyers and Court attendants will be appropriately dressed while in Court attendance. The Bailiff in attendance will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct and deportment.

RULE 3.

OPENING AND ADJOURNMENT OF COURT

Upon the Judge or Referee entering the Courtroom preparatory to the formal opening of Court, the Bailiff will call the Courtroom to order, directing all in attendance before the Court to stand and will open Court in substantially the manner following:

This Honorable Juvenile Court of Memphis and Shelby County is now open for the transaction of business pursuant to adjournment, the Honorable _____ presiding.

Thereupon the Judge or Referee will take the seat upon the bench and those in the Courtroom will be seated. Upon the Court instructing the Bailiff to adjourn Court for the day, the Bailiff will direct all in attendance before the Court or in the courtroom to stand, as will the Judge, and will adjourn Court in substantially the manner following:

This Court now stands adjourned until tomorrow morning at ____ o'clock. (or until a day certain)

RULE 4.

SESSIONS

There shall be a session of Court daily except on non-judicial days, which are Saturdays, Sundays, and holidays. Court hours are 8:30 a.m. to 4:30 p.m. Only the presiding Judge may authorize exceptions to this schedule. Unless the Judge directs otherwise, any case in which the Court has jurisdiction may be heard in the first instance by a Referee.

RULE 5.

OFFICE HOURS

The office of the Clerk of Court shall be open for the regular transaction of business from 8:00 a.m. until 4:30 p.m. except on non-judicial days.

RULE 6.

PLEADINGS

All petitions, answers, orders, briefs, or other legal documents, filed or presented to this Court shall be typewritten on forms provided by the Court or typewritten on letter-sized (8 ½" x 11") paper, opaque and unglazed. Two copies of every pleading shall be filed in all cases, one of same to be marked "duplicate." Such pleading must be filed at the Legal Records Section of the Court Clerk's Office, and it shall be the duty of the Clerk of Court to indicate

on each copy the date and time of filing. Form petitions that meet the requirements of law are provided by the Court for most every type of proceeding within the jurisdiction of the Court, and Court personnel shall appropriately assist as necessary in the preparation of petitions.

RULE 7.

SUBPOENAS

All subpoenas shall be typed or printed on forms provided by the Court and submitted to the Court officer assigned to the case, or to the Clerk of Court, as diligently as possible, but not later than five (5) days, excluding non-judicial days, before the scheduled date of trial. A party to a proceeding who is not represented by an attorney may simply furnish to the assigned Court officer a list of the names and addresses of the witnesses to be subpoenaed, and it shall be the responsibility of that officer to cause subpoenas to be issued in accordance with this rule.

RULE 8.

ATTORNEYS

All attorneys licensed to practice law in Tennessee shall be allowed to appear in any matter coming before the Court. Every party to a proceeding who wishes to employ an attorney shall be given an opportunity to do so. The Court will appoint an attorney to represent any defendant who has a constitutional right to counsel and who is determined by the Court to be indigent. Attorneys and guardians ad litem shall enter an appearance in a case in which they represent a party as counsel of record or have been appointed by the Court. Entering an appearance may be made by filing a pleading on behalf of a party, filing a formal notice of appearance or a written form notice filed with the Clerk. Attorneys of record and guardians ad litem shall represent the party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by Court order upon written motion. In accordance with Rule 19 of the Tennessee Rules of Juvenile Procedure, attorneys of record who wish to terminate their representation may do so only with permission of the Court.

(Note: Attorneys may elect to file all preliminary and statutorily required documents without the assistance of Court personnel.)

RULE 9.

CONDUCT OF TRIALS

Proceedings in this Court, except dependent and neglect cases, shall be open to the general public. In the discretion of the Court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted. And no person within, without, or in the vicinity of the Juvenile Court Building shall accost, solicit, or interfere in any way with any person on or about the premises of the Court or otherwise engage in any conduct which may tend to interrupt, disturb, or

hinder the orderly conduct of the Court's business. In Juvenile proceedings a parent or guardian must be present at every adjudicatory hearing unless excused by the Court in writing or on the record. The Court will appoint a guardian ad litem to act on behalf of a child in determining the interests of a child at any stage of the proceedings when the child is without parent or guardian, or when it appears to the Court that the interests of the child so require.

RULE 10.

DISCOVERY

Neither the Rules of Civil Procedure nor the Rules of Criminal Procedure pertaining to discovery are applicable in Juvenile Court proceedings. The Court shall, however, allow discovery upon motion by either party, being timely filed, and upon good cause shown. Any party may object to discovery by filing a response promptly after the filing of such motion. Failure to respond to a motion for discovery shall be considered consent to such motion. Discovery may then be allowed under such terms and conditions as the Court may prescribe. Officers of the Court shall make available for inspection by counsel to a party to any proceeding all Court files, records, and written reports in the case, except confidential reports of harm made pursuant to child abuse laws and other information which may not lawfully be disclosed. Court Appointed Special Advocate (CASA) and child welfare agency reports shall be confidential and, unless the Court directs otherwise, shall be submitted to the Court in original form only, in camera, and may be reviewed exclusively by counsel for the parties. The confidential CASA or child welfare agency report shall not be made a part of the record except under seal. Thereafter, upon written motion of a party, and good cause being shown, the Court may allow the seal to be removed under such circumstances as the Court may prescribe.

RULE 11.

ERROR AND EXCEPTIONS

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. Exceptions to rulings of the Court are unnecessary. If a party makes no objection to a ruling or order, absence of an objection does not in itself prejudice the party thereafter.

RULE 12.

PETITIONS FOR REHEARING HEARD BY THE PRESIDING JUDGE

If a rehearing of any decision heard by the Judge is sought by any party to the action, a petition for rehearing before the Judge must be filed with the Clerk of Court within ten (10) days after the entry of the decree or judgment. Upon good cause shown, the Court may extend time limits specified in these rules except those time limits that are statutory. Before being presented to the Court, copies of petitions for rehearing, with any brief in support thereof, must be furnished to the adversary counsel, who will be accorded five (5) days within

which to answer. Such petitions for rehearing and answers shall be filed and delivered by respective counsel promptly to the Court without argument. If the Court desires to hear oral argument, counsel will be so notified.

RULE 13.

REHEARINGS OF MATTERS FIRST HEARD BY A REFEREE

The Judge may, on his own motion, order a rehearing of any matter heard by a Referee. Any party may, within five (5) days after the hearing before the Referee, excluding non-judicial days, file a request for and be allowed a hearing before the presiding Judge. Provided, however, that a rehearing will not be allowed in any delinquency or unruly case in which the Referee recommends dismissal after a hearing on the merits. The recommendation of the Referee, in all matters before the Court, shall be the decree of the Court pending a rehearing. Any hearing by a Referee on any preliminary matter is final and not reviewable by the Judge of the juvenile Court, except on the Court's own motion, except setting of bond in detention hearings.

RULE 14.

ORDERS AND DECREES

Unless specifically directed to do so by the Court, attorneys are not required to prepare and submit orders and decrees. Such orders and decrees are prepared by a clerk who records the order at the time given in Court. Any party wishing to prepare and submit an order for approval may simply inform the Court of that intention. Such orders must be submitted to the Court for approval and entry not later than the fifth (5th) day following the decision.

The following language shall be included in all recommendations and orders when a child adjudicated delinquent is placed in the custody of the Tennessee Department of Children's Services, TO WIT:

That a child placed in the custody of the Department of Children's Services pursuant to T.C.A. Section 37-1-129 shall be removed immediately from the Juvenile Court's detention facility by the department's representative. For the purpose of this provision "immediately" means the day the Court commits the child to the Department of Children's Services.

RULE 15.

APPEALS

An appeal of the Court's disposition of a child in any case, whether the allegations of the petition are admitted or denied may be perfected by filing a notice of appeal on a form provided by the Court within ten (10) days, excluding non-judicial days, of the final disposition. The appeal period shall commence the day after the order of disposition is entered. Provided, however, that if a rehearing of a matter heard by a Referee is not requested or provided on the Court's own motion, the parties shall be allowed fifteen (15) days, excluding non-judicial days, from the date of entry of the order in which to perfect and appeal. Any final order or judgment in a dependent and neglected or unruly

proceeding may be appealed to the circuit Court and final orders in a delinquency proceeding may be appealed to the criminal Court. An appeal shall not operate as a stay, and the order of this Court shall remain in effect until or unless the circuit or criminal Court enters an order to the contrary. Appeal of any final judgment entered in Juvenile Court except the disposition of a child shall be as provided in the Tennessee Rules of Appellate Procedure.

RULE 16.

MEDIATION AND PARENTING PLANS

Parties shall be made aware that Mediation services are available and may be ordered at the discretion of the Court in contested cases. The Court may also order that a Parenting Plan be submitted and incorporated by references into any Final Order.

Unless otherwise ordered, the Court requires contested actions, either for initial orders or modification of existing orders of this Court involving the following issues to be referred to mediation prior to a trial on the merits:

- (1) Custody of minor children;
- (2) Co-parenting responsibilities and schedules.

Upon motion of any party or sua sponte, the Court may order any other eligible matter within the jurisdiction of this Court, except delinquency, and neglect and abuse matters, to be referred to mediation prior to a trial on the merits. The parties may agree on any person to be a mediator. If the parties cannot agree on a mediator, a motion shall be made to the Court to appoint a Rule 31 dispute resolution neutral mediator. Nothing in this rule shall prevent the parties from proceeding with settlement negotiations prior to mediation.

The mediators' fees may be taxed as Court cost or the Court may determine the case is appropriate for pro bono mediation. The parents or guardian may directly negotiate the fees with the mediator. Each mediator must provide proof of three pro bono mediations to the AOC for annual reapproval.

THIS RULE MAKES MEDIATION DISCRETIONARY ON ALL CONTESTED ISSUES INVOLVING MINOR CHILD(REN). THE COURT ENCOURAGES THE PARTIES TO USE MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION METHODS ON ALL CONTESTED ISSUES.

RULE 17.

VISITATION — CUSTODY — PATERNITY PETITIONS

CUSTODY and PATERNITY — In initial petitions for custody or after establishment of parentage in the event there is a request for visitation and there is no agreement between the parties regarding visitation, unless the Court finds otherwise, the Court's standard visitation schedule shall be entered until there is an agreement of the parties or order of the Court is entered. In the event either party disagrees with standard visitation they may request the matter be scheduled on the appropriate docket for determination by the Court.

VISITATION — In initial petitions for visitation, in the event there is no agreement between the parties and/or guardian regarding visitation, unless

the Court finds otherwise, the Court may enter an order for co-parenting time with the current non-residential parent according to the Court's standard visitation schedule until an agreement is reached or the Court makes a further determination.

Standard Visitation Schedule - - - See Appendix 1

RULE 18.

SCHEDULING OF HEARINGS AND CONTINUANCES

At any time prior to the trial date upon motion of any party or on its motion, the Court may refer any appropriate case for mediation.

Cases may be continued only by leave of Court. Cases will not be continued except for good cause. All cases continued by leave of Court will be by written order stating (a) the reason for continuance, (b) who requested continuance, and (c) date of continuance. Agreed upon continuances shall be by Order signed by counsel of all parties and/or parties and shall specify a new trial date. It is the party's responsibility requesting the continuance to notify all parties and witnesses subpoenaed of the continuance and the new trial date.

No case shall be "continued indefinitely." Any case not specifically scheduled for hearing within twelve (12) months of the date of filing or last issued process or service, whichever is later, shall be subject to dismissal.

Absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and the Rules of Civil Procedure, if applicable.

When a case is set without objection, failure to complete discovery, unavailability of counsel on the trial date, inability to take depositions, or failure to complete any other trial preparation will not be grounds for a continuance, except for good cause shown prior to trial date. In cases continued or passed for reassignment, the Court may award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses and tax the same as Court costs.

All dispositional hearings shall occur immediately after the adjudication of a petition unless the Court deems otherwise. The Court may on its own Motion set a later dispositional date.

All petitions alleging that a child is dependent and neglected shall be set on a docket as may be designated by the Court for a status report within (not-later-than) thirty (30) days from the date of filing of said petition in the Clerk's Office. On the status report date, any pending procedural matters shall be resolved and an adjudicatory hearing date shall be assigned pursuant to a Certificate of Readiness being filed in accordance with Rule 21 of these rules.

RULE 19.

PRELIMINARY HEARINGS IN DEPENDENT AND NEGLECTED CASES

Preliminary hearings in dependency and neglect proceedings shall be limited by the Court to thirty (30) minutes. Each side will be allowed a maximum of fifteen (15) minutes for opening presentation of witnesses,

cross-examination of adverse party, and closing arguments. The Court may in its discretion expand said time limits.

It is unnecessary for the Court to hear more of the petitioner's proof than is necessary to establish probable cause, and the Court may terminate the hearing at any time that probable cause has been established and the defendants have been afforded the opportunity to cross-examine the witnesses called by the petitioner and to present defense reasonably tending to rebut probable cause.

(a) The rules and time restrictions pursuant to Rule 16, of the Rules of Juvenile Procedure shall be controlling.

(b) At the preliminary hearing if a guardian ad litem has not been appointed, one shall be appointed for each child who is or may be the subject of a report of allegations of a petition for dependency, neglect and abuse, pursuant to Rule 13 of the Supreme Court Rules, and

(c) The Court shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel shall be appointed if the party is entitled to counsel by law and is indigent and requests appointment of counsel.

RULE 20.

MOTIONS — GENERALLY AND FOR APPOINTMENT OF ATTORNEY

Motions shall be disposed as hereinafter provided:

1. Motions shall be set for hearing on the dockets designated by the judicial officers to whom the cases are assigned. Legal arguments may be heard and agreements announced on the motion docket. Testimony will not be heard at the initial motion docket. If testimony is required, the case will be re-docketed. Briefs and responses may be required at the discretion of the judicial officer.

2. Motions shall be filed at least fourteen (14) days prior to setting for hearing, unless special approval from the Court is obtained prior to filing.

3. Motions for discovery in dependent and neglected, custody, or visitation cases will be routinely granted unless a written objection is filed. If an objection is filed, the designated judicial officers shall schedule the motion for a contested hearing.

Advisory Comment. When the new Local Rules of Court become effective it will be the responsibility of the proponent of a petition to make a report of the status of the case (excluding child support and delinquency matters) within thirty (30) days of the filing of the action. Both private attorneys and attorneys for the DCS may contact the Protective Services Department to obtain the docket day to which the case has been assigned and the proper docket day to present the report. The report is required in writing within the prescribed time. Since no testimony will be required, these status reports may be submitted in advance.

The purpose of this report is to determine that the case is progressing to be ready for trial at the assigned trial date which is set by the Protective Services Department. In most cases,

and all D&N cases, a GAL will be appointed, and in the event neither a private attorney nor DCS is involved the GAL could fulfill this duty.

Referees assigned D&N and Visitation and Custody dockets each have a scheduled preliminary hearing docket. Status reports will be presented to the appropriate referee assigned the concerned docket either by mail or during the referee's preliminary hearing docket following the scheduled PCO preliminary hearing, if any. Status reports shall be typed and reflect the status of the case. There will be no testimony or evidence presented at the status report date. Parties may announce agreements at these hearings.

Motions may be filed in the usual manner, and Referees may also schedule motions on cases assigned to their scheduled docket at the

preliminary hearing docket with approval of the motion to be heard at the mutual convenience of the court and/or the parties. the referee. The assigned referee may schedule

RULE 21.

CERTIFICATE OF READINESS — WITNESS AND EXHIBIT LISTS

In all cases, except Title IV-D child support matters, set for adjudication and/or disposition, including matters for an initial order of Non Title IV-D child support and matters to modify an existing order of Non Title IV-D child support, a Certificate of Readiness containing the following shall be filed with the Clerk of the Court and served upon all parties no later than ten (10) days prior to the scheduled hearing:

- a. A Witness List — including the names, addresses and phone numbers (if known) of all witnesses (other than impeachment and rebuttal witnesses). Any witness not so listed shall not testify unless excused by rule or the Court.
- b. An Exhibit List — copies of exhibits to be proffered at trial (other than impeachment or rebuttal exhibits). Exhibits that are not easily capable of image reproduction shall be identified and made available for inspection by opposing counsel.

Failure to comply with this rule could result in sanctions to the attorney and offending parties' witnesses not being allowed (permitted) to testify.

SAMPLE FORM See Appendix

RULE 22.

RESTITUTION

The Court may at the dispositional hearing set restitution in Delinquency cases as provided by T.C.A. 37-1-131 on motion of proper parties or on the Court's motion. The Court may limit discovery for purpose of restitution.

RULE 23.

CHILD AND FAMILY TEAM NON-DCS AND NON-PCO CASES

Parties shall be made aware that the Tennessee Department of Children's Services is available to conduct a CHILD AND FAMILY TEAM conference to aid the Court and to assist the parties to resolve issues alleging that a child is dependent and neglected unless the department is a party or a protective custody order has been entered. The parties' participation in scheduled meetings may be ordered at the discretion of the Court in contested cases upon review by the Court of the department's initial investigative report of the allegations of the petition. In the event the Court orders a child and family conference the department will inform the parties at their last known address to appear at a place to be designated either together or separately as may be appropriate for them to be instructed as to department's function in facilitating child and family meetings, and shall be informed of the duties and responsibilities of the parties. In the event the parties fail or refuse to participate in said meeting the Court may render sanctions against the offending party unless good cause is shown for such failure.

Shelby County

RULE 24.**AGREED ORDERS IN CIVIL MATTERS****Tennessee Rules of Juvenile Procedure, Rule 22**

(A) General Provisions. Most civil matters within the jurisdiction of this Court may be resolved by a written agreement between the parties. After petition is filed if the parties resolve their matter they may submit a written agreement to be signed by the designated referee as per AGREED RECOMMENDATION, which shall recite that the parties are aware that the agreement is based upon the order of the court and their failure to comply therewith without just cause places them in contempt of court and subjects them to the action that the court deems proper within its jurisdiction. The order may be entered into the minutes after judge's confirmation by signature.

(B) In child custody cases, and cases pursuant to petition for parentage, T.C.A. 36-2-301 et seq., when parties are in complete agreement in matters of custody, support (with completed child support work sheets), and visitation, and a court hearing appears to be unnecessary, the parties may enter into an agreed order.*

Agreed orders may be modified, due to change of circumstances, by agreement of the parties with approval of the court or by order of the court upon notification to parties and a hearing. In no event shall modification of an agreed order result in a child being placed into the custody of the Department of Children's Services without the appropriate petition having been filed with the clerk of the court alleging the child to be dependent, neglected, abused, unruly or delinquent.

(C) In petitions alleging dependency, neglect or abuse the court shall not approve an agreed order regarding custody, support, or visitation awarded to a party other than the state unless there has been a social investigation as required by law, and the investigating agency's recommendation concurs with the agreement between the parties.

This subsection shall not be construed as eliminating the judicial findings required for child in state custody by T.C.A. section 37-1-166 and 37-2-409 or as otherwise required by case law and federal regulations. The agreed order must recite the findings to the court's satisfaction and be signed by the referee and confirmed by the judge.

RULE 25.**RESTRAINING ORDERS**

(a) On application of a party or on the court's own motion the court may make an order restraining or otherwise controlling the conduct of a person if:

(1) An order of disposition of a delinquent, unruly or dependent or neglected child has been or is about to be made in a proceeding under this chapter, or as otherwise authorized by law;

*In regard to agreed orders in custody cases, counsel is urged to carefully review the holding in *Blair v. Badenhope*, 77 S.W.3d 137 (Tenn. 2002), regarding possible impact of an agreed order changing custody from a parent to a third party on any future modification of such agreed order. See Rule 22, TRJP and Advisory Commission Comment (2007)

(2) The court finds that the conduct (i) is or may be detrimental or harmful to the child and (ii) will tend to defeat the execution of the order of disposition; and

(3) Due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

(b) Restraining orders may be issued upon such terms and conditions, and shall remain in force for such time, as shall seem just and proper to the Judge. See Rule 26, TRJP and Advisory Commission Comment (2007).

APPENDIX

STATUS REPORT

Type of case
Service of process on all parties
Is party entitled to attorney by law
Has GAL been appointed
Have parties exchanged witness list
Has discovery been completed
Referral of case for mediation
Referral of case for DCS child and family team meeting
Estimated length of time to try case

PRIVATE ATTORNEY PROCESS FOR FILING PETITIONS

Dependent & Neglect

1. Information sheet completely and accurately filed out.
2. Affidavit of Custody TCA 36-6-224.
3. Request Clerk of Court to research court records to determine if files exist.
4. Petition typed according to statute and Rules of Court:
 - (a) If emergency protective custody requested petition must have proper allegations
 - (b) Order prepared for Judge or Referee to issue PCO
5. Complete summons and notices to be served on appropriate parties.
6. Check with Protective Services department to obtain status report date.
7. Request Protective Services department to make referral to DCS.
8. Request appointment of GAL from coordinator.
9. Make status report in writing to proper docket and date.
10. Request clerk to schedule for trial when case at issue.
11. Prepare and file subpoenas.

CUSTODY AND/OR VISITATION

1. Request Clerk of Court to research court records to determine if files exist.
2. Prepare petition and summons to file.
3. Check with Protective Services department to obtain status report date.
4. Make status report in writing to proper docket and date.
5. Request clerk to schedule for trial when case at issue.
6. Prepare and file subpoenas.

RULES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

Effective January 1, 2011

TABLE OF CONTENTS

RULE.	RULE.
I. SESSIONS AND COURTROOM PROCEDURE	XIV. PETITIONS FOR ELECTIVE SHARE, HOMESTEAD AND YEAR'S SUPPORT
II. GENERAL INFORMATION FOR ATTORNEYS	XV. PERSONAL REPRESENTATIVE'S DUTY TO TIMELY FILE AFFIDAVITS IN DECEDENTS' ESTATES
III. RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE	XVI. CLOSING OF DECEDENTS' ESTATES
IV. PLEADINGS	XVII. CLOSING GUARDIANSHIPS OF MINORS
V. PETITIONS TO OPEN ESTATES	XVIII. INVESTING FUNDS PER COURT ORDER
VI. ASSIGNMENT OF CASES	XIX. PARTICIPANTS WITH DISABILITIES
VII. APPOINTMENT OF GUARDIANS AD LITEM	XX. ORDERS LEFT WITH JUDGE'S SECRETARY
VIII. SPECIAL SETTINGS	XXI. MUNIMENT OF TITLE AND SMALL ESTATE AFFIDAVIT
IX. WITNESSES	APPENDIX A
X. INVENTORY IN DECEDENTS' ESTATES	
XI. ACCOUNTINGS	
XII. FIDUCIARY ACCOUNTS	
XIII. FEES	

Commentary.

All references in these Rules to the masculine pronoun shall be deemed to refer to the female pronoun where applicable.

Compiler's Notes. These rules, effective

January 1, 2011, replace the former rules, effective September March 15, 2005. The former rules replaced the prior rules revised and adopted September 15, 2001.

The Probate Court of Shelby County, Tennessee, hereby adopts the following as its Local Rules of Court:

RULE I.

SESSIONS AND COURTROOM PROCEDURE

1. Both Divisions of the Court will be in *regular session* from 9:00 A.M. until noon Monday through Thursday, and from 9:00 A.M. until noon on Friday. Division One will be in *regular session* from 2:00 P.M. until 3:00 P.M. Monday through Thursday. Division Two will be in *regular session* from 1:00 P.M. until 2:00 P.M. Monday through Thursday. Friday afternoons are reserved for internal administrative matters.

Mental health commitments will be held on Thursday afternoons, with the Judges alternating months to hear these commitments. These hearings will take place in the courtroom at Memphis Mental Health Institute.

During a portion of the summer months, the Court may adopt a flexible afternoon schedule. Attorneys who desire to have matters heard in the

afternoon during this period should consult with the Judge's secretary concerning availability.

2. The Judge and any substitute judge shall wear a Judicial robe during all sessions of the Court except when, in the discretion of the Judge, the circumstances are such, or the matter before the Court is of such a nature, as justifies a less formal hearing.

3. When the Judge first enters the Courtroom each day, the Sheriff shall call the Court to order directing all in attendance to stand, and upon being so instructed by the Court, will open Court in the manner following:

"Hear Ye! Hear Ye! This Honorable Probate Court of Shelby County is now open for the transaction of business pursuant to adjournment. The Honorable Judge [Judge's Name] presiding. All persons having business with this Court draw near, give attention, and ye shall be heard. Be seated, please."

4. The use of cellular phones and audible pagers in the Courtroom is prohibited.

5. There will be no eating, drinking, or smoking in the Courtroom, and no food or drink containers shall be brought into the Courtroom.

6. The front row of seats at the counsel table in the Courtroom is reserved for members of the Bar.

7. All attorneys and Court attendants will wear appropriate business attire while in the Courtroom. Litigants and witnesses as well are to be properly attired, consistent with the dignity of the Court.

8. Before presenting a matter, attorneys are encouraged to state their name, the docket number of the case, and the nature of the matter being presented. For example: "Your Honor, for the record my name is [attorney's name], and I have a Petition to open an intestate estate and appoint an administrator. The docket number is [docket number]."

9. When addressing the Court, unless excused by the Judge, counsel should rise and remain standing while making any objection, argument, or statement to the Court, including such time as the Court may address or interrogate counsel. Counsel is not required to stand while interrogating witnesses, but may do so at counsel's option.

10. All items that are presented to the Court such as exhibits and orders shall be handed to the Judge through the Court attendants. Attorneys must seek and obtain permission from the Judge before approaching the Bench or a witness.

11. Upon the Judge instructing the Sheriff to adjourn Court for the day, the Sheriff will direct all persons in the Courtroom to stand and will adjourn Court in the following manner:

"This Court now stands adjourned until tomorrow morning at 9:00 o'clock (or such other day and time as the Court may indicate)."

12. The Deputy Sheriff in attendance upon the Court will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct.

RULE II.**GENERAL INFORMATION FOR ATTORNEYS**

1. Only attorneys licensed to practice law in Tennessee may represent persons in matters coming before the Court, except that attorneys who are not licensed to practice in Tennessee may appear *pro hac vice* under the terms and conditions set forth in Tennessee Supreme Court Rule 19. This Rule requires Tennessee counsel to sign all pleadings and appear in Court with the non-resident attorney.

2. An attorney who opens any matter becomes the attorney of record and is obligated to comply with all applicable laws, these Local Rules, and all Orders of the Court. It is the responsibility of the attorney of record to see to the full extent of the attorney's professional ability that the matter is properly managed, administered, assets distributed, and the cause closed without undue delay. The attorney of record is not relieved of this responsibility unless and until the attorney of record obtains an Order of Withdrawal or an Order Substituting Counsel, or unless a Notice of Appearance by other counsel is filed in the cause.

3. The Court may enter an Order Substituting Counsel or, in the alternative, a Notice of Appearance may be filed with the Clerk if signed by both the new and withdrawing attorney(s); however, the signature of the withdrawing attorney(s) is not required if the withdrawing attorney(s) is no longer engaged in the practice of law.

4. The attorney of record is expected to personally oversee the proper opening of all fiduciary accounts.

5. It is the responsibility of the attorney of record to advise the Court whenever a bond appears to be either insufficient or excessive, and to enter an order increasing or decreasing the bond as is appropriate. Normally, however, the amount of a bond is not decreased except upon the filing of an accounting or other sworn statement.

6. Orders shall be prepared by counsel for the prevailing party and submitted to adversary counsel for approval. Orders shall be presented to the Court by counsel within one week after the matter is decided, unless additional time is granted by the Court. In the event of a disagreement between counsel regarding the contents of the order, counsel for each party shall prepare such order as is considered appropriate, within one week after the matter is heard, adhering as nearly as practicable to the wording adopted by adversary counsel, and both shall be submitted to the Court. Disagreement as to the wording of an order shall not excuse failure to timely submit same to the Court.

7. Pursuant to Rule 5.05 of the Tennessee Rules of Civil Procedure, the following shall not be filed with the Clerk unless on Order of the Court or for use in the proceeding: depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto.

8. Briefs, Memoranda of Points and Authorities, or similar matters pertaining to a contested or specially set matter, shall be filed with the Clerk at least three (3) days prior to the hearing date, and a copy shall be left with the Judge's secretary (and opposing counsel where applicable). It is suggested that

photocopies of the relevant portions of authorities cited therein be attached only to the Judge's copy of Briefs or Memoranda of Points and Authorities.

9. Counsel appearing in Probate Court shall follow the Guidelines for Professional Courtesy and Conduct adopted by the Memphis Bar Association. Counsel is expected to deal with opposing counsel, the parties, and the Court in a professional, courteous, and ethical manner. Counsel is expected to be open and fair in the handling of probate matters, consistent with adversarial responsibilities.

10. Before presenting a contested matter to the court, counsel shall—to the best of their ability—encourage their clients to settle their differences. The Court encourages the voluntary use of mediators under Tennessee Supreme Court Rule 31 in contested matters. If the parties are unable to agree upon a mediator, the Court will select a mediator using the procedure set forth in Tennessee Supreme Court Rule 31, section 4(b). Mediation will normally be required in will contests.

11. In proceedings to sell real estate, it shall not be necessary for the appraiser to testify in person, provided:

- a) the appraiser is properly licensed,
- b) the written appraisal is filed in the cause, and
- c) the appraised value is not more than 10% higher than the proposed sale price.

The appraiser may nevertheless be called to testify if any interested party, attorney, or Guardian Ad Litem believes the appraiser's testimony would be important to the issues to be decided.

12. A list of website and office forms, currently available from the Probate Court Clerk, is attached as Appendix A to these Rules and may also be found at the Probate Court website.

RULE III.

RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE

The Tennessee Rules of Civil Procedure and Tennessee Rules of Evidence shall apply.

RULE IV.

PLEADINGS

1. All Petitions and Complaints filed in Court shall be sworn to and shall be addressed in the following form:

“TO THE HONORABLE JUDGES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE:”

2. All Petitions, Motions, and other pleadings shall be filed with the Clerk prior to presentation to the Court.

3. All pleadings shall set forth the docket number, style of the cause, the nature of same, and the name and signature of counsel. All pleadings filed by an attorney in a matter shall also contain the address, telephone number, and Board of Professional Responsibility number of counsel. The title of an order should contain a brief description of the action taken. All pleadings shall be on 8½ x 11 inch paper.

4. No original pleading or file shall be withdrawn from the Courthouse without a Court order.

RULE V.

PETITIONS TO OPEN ESTATES

1. Pursuant to TENN. CODE ANN. § 30-1-117 and these Rules, the following shall be included in Petitions to admit wills to probate and Petitions for the administration of estates:

a. The identity and address of the Petitioner.

b. The decedent's name, age (if known), date and place of death, and residence at time of death.

c. In case of intestacy, the name, age (if known), mailing address, and relationship of each of the heirs at law of the decedent. The Petition shall also state the names of any minors or other persons under disability. Also, and in intestate cases, the Petition must further include a statement that all parties who hold a statutory preference to serve as a Personal Representative have been given reasonable advance notice of when the Petition is to be heard or whether good cause exists as to why the persons with statutory preference were not notified.

d. A statement that the decedent died intestate or, if a will is presented, the date of execution (if known) of the document or documents offered for probate and the names of all attesting witnesses.

e. A copy of the document(s) offered for probate must be attached to the Petition.

f. An estimate of the fair market value of the estate to be administered, unless bond is waived by the document offered for probate or is waived as authorized by statute.

g. If there is a document, whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law.

h. If there is a document, a statement that the Petitioner is not aware of any instrument revoking the document being offered for probate, if such be the case, and that the Petitioner believes that the document being offered for probate is the decedent's last will.

2. Pursuant to TENN. CODE ANN. § 71-5-116(d)(1)(C), Petitions to admit wills to probate and Petitions for the administration of estates shall state whether or not the decedent was over or under age 55 and was or was not a TennCare recipient.

RULE VI.

ASSIGNMENT OF CASES

1. Except as otherwise provided, the Clerk will assign matters with odd docket numbers to Division One and will assign matters with even docket numbers to Division Two. When filing a matter that is a companion case or that relates to a pending matter, the attorney should call this fact to the attention of the Clerk. Under such circumstances, the Clerk will assign the new case to the Division of Court in which the companion or related case is pending.

2. After a case has been assigned to a particular Division, the Judge of that Division shall have complete control over the matter. In the interest of justice and for good cause, the Judges, by mutual consent, may transfer a case from one Division of Court to the other.

3. When any matter requires attention and the Judge to whom the matter has been assigned is not available or is involved in a protracted hearing, the Judge who is available and consents thereto may hear the matter by interchange.

RULE VII.

APPOINTMENT OF GUARDIANS AD LITEM

1. In any case in which a Petition is filed for the sale or improvement of any real property belonging to a minor or other person under disability, the Court shall appoint a Guardian Ad Litem who shall investigate all matters embraced in the Petition, attend the hearing, and file a written report with the Court at least three (3) days prior to the scheduled hearing on the matter. A copy of the report shall also be left with the appropriate Judge's secretary.

2. In all Petitions filed for Court approval of unauthorized encroachment of funds, sales of personalty, and in all other matters relating to persons under disability, the Court may, in its discretion, appoint a Guardian Ad Litem to make an investigation and file a written report with the Court. This report shall be filed by noon on the day prior to a scheduled hearing. A copy shall also be left with the appropriate Judge's secretary.

3. In all actions that involve parties who are disabled, a Guardian Ad Litem shall be appointed to represent the best interest of the party under disability and to make recommendations to the Court as to the appropriateness of the proposed settlement.

4. When a Guardian Ad Litem is appointed, the attorney for the Petitioner shall promptly notify the Guardian Ad Litem of this appointment and furnish to the Guardian Ad Litem an attested copy of the Order appointing the Guardian Ad Litem and copies of all pleadings and appropriate documents.

5. Unless required by statute, appointment of a Guardian Ad Litem may be waived by the Court for good cause.

RULE VIII.

SPECIAL SETTINGS

1. The following matters shall be specially set for hearing at a date and time certain after the pleadings are at issue:

- a. Petitions to sell or encumber real property.
- b. Petitions to ratify substantial or unusual unauthorized encroachments.
- c. Exceptions to accountings.
- d. Petitions to admit wills to probate in solemn form.
- e. Petitions for substantial encroachments for support of wards or to pay debts.
- f. Petitions to set a year's support, to set aside exempt property or to determine an elective share.

- g. Petitions to contest a will.
- h. Petitions to establish lost or spoliated wills.
- i. Petitions to construe provisions of wills.
- j. Petitions to appoint Conservators.
- k. Applications for fees that exceed \$15,000.00.
- l. Applications for a fee that is in excess of the guidelines set forth in Rule XIII.
- m. All contested matters.
- n. Other matters such as those involving complex legal or factual issues or those that are expected to take more than thirty (30) minutes to be heard.
- o. Matters involving trusts.

2. When a matter is one that must be specially set for a hearing pursuant to Rule VIII, it is the responsibility of the attorney of record to obtain a special setting from the Judge's secretary. Upon requesting a special setting, if counsel reasonably anticipates that the time required will likely exceed thirty (30) minutes, this fact shall be brought to the attention of the Judge's secretary for scheduling purposes. No matter shall be specially set unless the attorney requesting the setting reasonably expects that all parties will be prepared to have the matter heard at the time set. Attorneys shall notify the Court as soon as it appears that a specially set matter cannot be heard on the date scheduled.

3. When more than one attorney is involved in a matter to be specially set, the setting will be scheduled only when all attorneys are either present in open court in order to obtain a setting, or they sign a Consent Order setting the time and date of the matter to be heard, and one of the attorneys presents it to the Court for approval.

4. It shall be the responsibility of the attorney who requests the special setting to give written notice to all interested parties. Interested parties entitled to notice shall include the creditors of a decedent's estate if the estate is expected to become insolvent and shall also include the State of Tennessee if some or all of the estate may escheat or be payable to the State of Tennessee. Service of process shall also be made if required by law.

5. The Court, in its discretion, may hear the above matters without a special setting upon good cause shown, provided that the Court finds that notice has been given or that notice is not required.

6. In all will contests and contested will construction matters, the attorney for the estate shall file a Motion For Scheduling Order (pursuant to Rule 16 of the Tennessee Rules of Civil Procedure) within 60 days after an Answer to the will contest or Will Construction Petition is filed. A copy of the Motion shall be delivered to the Judge's secretary at the time it is filed. The Court shall set the Motion for hearing as soon as practicable unless all parties submit a Consent Scheduling Order.

RULE IX.

WITNESSES

Witnesses shall be sworn separately and immediately before taking the witness stand, unless otherwise ordered by the Court.

RULE X.**INVENTORY IN DECEDENTS' ESTATES**

1. As provided by TENN. CODE ANN. § 30-2-301, an inventory must be filed by the Personal Representative within sixty (60) days after commencement of the administration of a testate or intestate estate unless waived as hereafter provided.

2. In intestate estates and in testate estates when the will does not waive inventory, the inventory may be waived if all heirs or beneficiaries consent thereto, provided all named heirs or beneficiaries are *sui juris* and provided the estate is solvent. If any heir is a minor, or of unsound mind, or declines to consent to waiver of the inventory, then an inventory shall be filed. In testate estates without a beneficiary under disability, no inventory is required if the will waives it; however, if an interested party files with the Clerk a written request for an inventory, the inventory shall be filed. The Clerk shall furnish a copy of the request for the inventory to the attorney for the estate.

3. The inventory should list all probate assets but exact dollar values need not be given nor must an appraisal be obtained. The Court does not require item by item listing of furniture and personal effects unless such an itemization is requested by an interested party.

4. The attorney of record is responsible for seeing that a copy of the inventory is provided to all interested parties.

RULE XI.**ACCOUNTINGS**

1. As provided by TENN. CODE ANN. § 30-2-601, the Personal Representative of a decedent's estate is required to make an accounting with the Clerk of the Court within fifteen months from the date of qualification and annually thereafter until the estate is fully administered. For good cause shown, the Court may extend the time for filing annual or final accountings. Tennessee law provides that accountings may be waived by the Court if the decedent's will waives the requirement or if all residuary beneficiaries are *sui juris* and have, in writing, excused the Personal Representative from filing an accounting; however, this Court's policy is not to waive accountings or extend time for filing accountings unless all interested parties are *sui juris* and agree, in writing, to waive or extend time for filing accountings. It should also be emphasized that, regardless of whether a waiver of accounting is allowed, the Personal Representative and counsel are obligated under these Rules to see that the estate is properly managed, administered, distributed, and closed without undue delay.

2. Pursuant to the requirement of TENN. CODE ANN. § 30-2-603, no account of a Personal Representative in a decedent's estate shall be taken until the Clerk of the Court or the Personal Representative or the Personal Representative's attorney has served all interested parties with notice of taking the account at least five (5) days before the time fixed for taking the same. A certification as to notice must be filed with the accounting and shall be signed by the attorney or Personal Representative to show that such notice was given. This requirement applies to all accountings in decedent's estates.

Shelby County

3. As provided for in TENN. CODE ANN. § 30-2-601(e), the Personal Representative, unless the representative is a bank, shall furnish the original of all canceled checks written on the estate account in support of the financial information entered in the accounting. If the financial institution does not return the original canceled checks, the photocopies of checks prepared by the financial institution or if none, the original printed statement can be substituted for the original canceled checks. This original statement must clearly delineate the date, payee and amount of the check for each disbursement.

4. Attorneys are urged to close estates within fifteen months after opening the estate. The Clerk of the Probate Court is authorized to approve one extension of time for up to sixty additional days *for a decedent's estate only*, provided the estate is less than two years old. An accounting should always be filed within fifteen months of opening an estate if a minor or incompetent person is a residuary beneficiary, or if a residuary beneficiary is a competent adult but declines to waive the accounting.

5. The Personal Representative of an estate should always furnish either an informal or a formal detailed accounting to residuary distributees of an estate. It is only the formal Court-approved accounting that may be waived by the Court. In no event should a Personal Representative or an attorney use pressure or undue influence to make a beneficiary or heir feel that he or she must sign a waiver. It is, therefore, unacceptable to suggest that unless the person waives an accounting, he or she will have to pay greater fees or that there will be a delay in receiving a gift or inheritance.

6. Copies of all accountings are to be furnished to all interested parties by the attorney of record or by the Personal Representative of the estate. Creditors in an insolvent estate shall be furnished copies of all accountings.

7. Pursuant to TENN. CODE ANN. § 34-1-111, Guardians and Conservators of the estates of minors or disabled persons are required to file annual accountings unless the accountings are expressly waived by court order or the court allows biennial or less frequent accountings.

8. When a Trust is a beneficiary of an estate, the Trustee of the Trust may waive an accounting. However, except as hereinafter provided, the receipt and waiver of the Trustee shall describe the asset or assets received from the Personal Representative. The description of assets shall not be required in the following circumstances:

- a. If the Trustee is a national bank or Trust company; or
- b. If all beneficiaries having a present interest are *sui juris* and agree in writing that the description of assets shall not be required.

9. Final accountings of solvent estates may be waived, and the estate may be closed on receipt and waiver in the manner described in Rule XVI.

10. In submitting accountings, the following shall apply:

- a. Entries on accountings should be specific, giving date, source, and amount. For example, do not just list "Deposit", but rather show as: "12/21/04 — Regions Bank Checking Account #854321 — \$721.71." Another example might be: "7/15/04 — Proceeds from Sale of 1999 Honda Accord — \$2,500.00."
- b. All assets of the estate should be reflected on the accounting; however, tangible property, such as vehicles, boats, farm equipment, etc., shall be listed separately from the monetary portion of the accounting. Tangible property

need not show a dollar value although approximations are permissible. Household furniture need not be itemized unless requested by an interested party.

c. All Personal Representatives should sign the accounting; however, in case of a disagreement or if one is unable to obtain a Co-Personal Representative's signature for any reason, the other(s) should file separately. If all Personal Representatives do not sign the accounting, this fact shall be brought to the Clerk's attention and referenced by a Clerk's note on the accounting. An explanation of the facts surrounding a missing signature must accompany the accounting.

d. If an accounting on a decedent's estate is filed more than two (2) years after the decedent's death, a notation on the accounting shall state why it is necessary to keep the estate open. An example is as follows: "A lawsuit is pending in Chancery Court, Docket No. 85762, in which the personal representative is a plaintiff. The estate can be closed soon after disposition of that case, which we anticipate will be in May, 2015."

e. It is preferred that items not be cumulative; however, no exception will be taken for identical monthly entries, such as: "Twelve (12) monthly encroachments of \$150.00 totaling \$1,800.00." Interest on bank accounts may also be cumulative.

f. In order to expedite the audit and confirmation of accountings, the Court strongly urges attorneys to use the inventory and accounting forms that have been approved by the Court, which from time-to-time may be updated. These forms are posted on the Probate Court Clerk's website.

RULE XII.

FIDUCIARY ACCOUNTS

All fiduciary accounts must be opened and maintained at institutions with offices located within the State of Tennessee unless otherwise provided by Court order.

RULE XIII.

FEES

A. Decedents' Estates

1. The Court will set the fees of Personal Representatives and attorneys for a decedent's estate upon Petition filed by the Personal Representative. The Petition may be filed by the attorney requesting the fee if the Personal Representative fails or refuses to file the Petition.

2 If the interested parties are all *sui juris* and agree to the fees, the Court will not require a Petition for fees to be filed in the cause. Any such fee agreement should be reduced to writing and should otherwise comply with the attorney's ethical responsibilities under Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

3. Fees for Personal Representatives. Non-corporate Personal Representatives shall be allowed all necessary expenses in the care, management, and preservation of the Probate estate. Additionally, non-corporate Personal Rep-

representatives may be allowed compensation for services rendered as hereinafter provided. The fee of the non-corporate Personal Representative shall be an amount the Court determines to be fair, reasonable and appropriate under all circumstances, including (but not limited to) the size of the estate being administered, the relationship of the Personal Representative to the decedent, the comparative involvement of the attorney for the estate and the non-corporate Personal Representative, the complexity of the matter, the cooperation or lack thereof by the beneficiary or heirs.

If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate), plus any income earned during the administration of the estate, is under \$50,000.00, a minimum fee of \$500.00 shall be considered reasonable. For estates totaling over \$50,000.00, the fee may be graduated as determined by the following guidelines:

<u>VALUE OF ESTATE</u>	<u>FEE</u>
First — \$100,000.00	1.00% to 2.00%
Next — \$900,000.00	0.50% to 1.00%
Over — \$1,000,000.00	0.25% to 0.50%

These guidelines reflect what may be considered to be reasonable, but are not binding on the Court, the parties, or the attorneys. If there are two or more Personal Representatives, the Court shall apportion such compensation pursuant to any agreement between them. If there is no such agreement, the Court shall apportion such compensation according to the services actually rendered by each.

4. Fees for Attorneys. In determining the amount of the attorney's compensation, the Court will consider the amount and character of the services rendered, the complexity of the estate, the time and effort involved, the character and importance of the litigation, the amount of money or value of property involved, the professional skill and experience required, and the expertise and standing of the attorney.

In setting fees for either the Personal Representatives or attorneys, the Court may consider any extraordinary services, including but not limited to sales or mortgages of real or personal property, lengthy or contested litigation involving claims against the estate, complex tax returns or audits by any federal or state agencies, the managing or selling of the decedent's business, will contests, or such other litigation or special services that may be necessary.

5. When setting fees for attorneys, the Court may consider the guidelines hereinafter set forth. If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate), plus any income earned during the administration of the estate, is under \$50,000.00, a minimum fee of \$2,500.00 shall be considered reasonable. For estates totaling over \$50,000.00, the fee may be graduated as determined by the following guidelines:

<u>VALUE OF ESTATE</u>	<u>FEE</u>
First — \$100,000.00	5.0% to 6.0%
Next — \$900,000.00	2.5% to 4.0%
Over — \$1,000,000.00	2.0% to 3.5%

These guidelines reflect what may be considered to be reasonable but are not binding on the Court, the parties, or the attorneys. Fees should be reasonable and otherwise in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

6. When the attorney of record also serves as Personal Representative, only one fee shall be allowed, but the Court in setting same shall take into consideration all of the services rendered.

7. A copy of any Petition that requests compensation pursuant to this Rule shall be given to all interested parties. Additionally, the interested parties shall be given not less than ten days written notice of the date and time the Petition is to be heard. This notice shall also be given to creditors of the estate if the estate is insolvent.

8. The Petition requesting fees for attorneys or Personal Representatives shall include the following:

- a. A description of the assets of the estate.
- b. A description of the services rendered.
- c. The value of the gross estate.
- d. The value of the probate estate.
- e. The amount of income earned by the estate.
- f. The amount of compensation requested.
- g. A statement that all interested parties have been properly notified of the proceedings and have been furnished with a copy of the Petition.

9. If the amount of the compensation requested by the attorney or Personal Representative exceeds \$15,000.00 or if the compensation requested is in excess of the percentage guidelines set forth in paragraph five of this Rule, the matter will be heard on a special setting.

10. The attorney or Personal Representative shall provide the Court with copies of the United States Estate Tax Return, when applicable, and the Tennessee Inheritance Tax Return two (2) days prior to the hearing on specially set fee applications, but same shall not be filed of record.

11. Except for good cause shown, Petitions for fees of Personal Representatives of estates and their attorneys will not be heard until the estate is substantially completed and an early closing of the estate is contemplated.

B. Fees in Matters Other Than Decedents' Estates

1. The Court shall set the fees of fiduciaries, attorneys, and court-appointed officials for matters other than decedents' estates. Fee applications should be reasonable and otherwise in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

2. The Court may set fees upon the confirmation of accountings, encroachments against guardianships and conservatorships, and other routine matters without the necessity of a written Petition.

3. The Court shall set fees that it deems reasonable under the totality of the circumstances, including the consideration of the non-monetary value of the services rendered for the benefit of the ward. The Court shall not be bound by any specific criteria or amount in setting fees under this Rule.

4. Attorneys are expected to discuss with the client the amount of the requested fee prior to the submission of the fee request.

NOTES TO DECISIONS

1. Reasonableness.

Court did not err in finding that the parties had entered into a fee agreement as asserted by the estate’s attorney, enforcing the fee agreement against the estate administrators, and in entering judgment in favor of the attorney for three percent of estate’s assets and, the reasonableness of the percentage was corroborated by

the attorney’s expert witness and credited by the court and by the probate court guidelines. *Cooper v. Estate of Weisberger*, 224 S.W.3d 154, 2006 Tenn. App. LEXIS 744 (Tenn. Ct. App. 2006), appeal denied, *Cooper v. Estate of Weisberger* (In re Estate of Weisberger), — S.W.3d —, 2007 Tenn. LEXIS 423 (Tenn. Apr. 16, 2007).

RULE XIV.

PETITIONS FOR ELECTIVE SHARE, HOMESTEAD AND YEAR’S SUPPORT

- 1. Petitions for elective share, homestead and year’s support shall be specially set for hearing and not less than ten (10) days written notice shall be given to all interested parties, stating the nature of the relief sought. Creditors are to be considered interested parties entitled to notice of the application and hearing if the estate is or could reasonably be expected to be insolvent.
- 2. In the Court’s discretion, a Petition for year’s support allowance may be filed and heard even if no estate has been opened, provided that all interested parties are given notice of the proceeding and it can reasonably be expected that the entire personal estate should be set aside as a year’s support.

RULE XV.

PERSONAL REPRESENTATIVE’S DUTY TO TIMELY FILE AFFIDAVITS IN DECEDENTS’ ESTATES

As provided by TENN. CODE ANN. § 30-2-301(b)(3) and § 30-2-301(b)(5), affidavits must be filed by the Personal Representative within sixty (60) days after the issuance of either Letters of Administration or Letters Testamentary. Said affidavits must verify that the Personal Representative has complied with the aforementioned statutes.

RULE XVI.

CLOSING OF DECEDENTS’ ESTATES

In order to close an estate, whether or not a final accounting is waived, the Personal Representative, after the period for creditors to file claims against the estate has expired, shall file a Petition with the Clerk of the Court stating substantially the following facts, together with a qualification or explanation if any statement is not accurate:

- a. That the Personal Representative has properly administered the estate.
- b. That the Personal Representative has timely filed the affidavits regarding Notice to TennCare and Notice to Beneficiaries, as required under both TENN. CODE ANN. § 30-2-301 and Local Rule XV. If notice was not timely given or if the required affidavits were not timely filed, the Petition to close the estate must specifically reflect that the estate was properly administered except that the Personal Representative failed to give timely notice or failed to file the required affidavits timely, as the case may be. The Court may require the

Shelby County

Personal Representative to appear in open court and testify as to the reason for noncompliance.

c. That the Personal Representative has paid or settled all claims that were lawfully presented and that written satisfaction of all claims is attached or filed in the cause (or if the estate has been declared insolvent, that the estate has been distributed in accordance with the Plan of Distribution).

d. That the Personal Representative has paid or has set aside funds to pay all expenses of administration, including bond premiums and Court costs.

e. That, consistent with all of the requirements of TENN. CODE ANN. § 30-2-306, the Personal Representative has mailed or delivered a copy of the published notice of the requirement to file claims to the creditors of the decedent who were known to or reasonably ascertainable by the Personal Representative.

f. That the Personal Representative has filed in the cause the final receipt and release from the Tennessee Department of Revenue evidencing payment of all Tennessee inheritance and/or estate tax due from the estate, or, in the alternative, a non-taxable certificate. (Note: In lieu of this statement, if the gross estate is less than \$100,000 in value and if decedent made no gifts during decedent's lifetime with a value exceeding the statutory exclusion, the Petition may contain a statement that the court has waived, or is requested to waive, filing of the inheritance tax return under TENN. CODE ANN. § 67-8-409.)

g. That the Personal Representative has distributed the estate according to the will and has obtained and filed receipts for specific bequests or, if the decedent did not leave a will, has distributed the estate according to the laws of intestate succession.

h. That the Personal Representative has complied with TENN. CODE ANN. § 30-2-301 requiring a copy of the will or appropriate portion thereof to be furnished to legatees or devisees under the will or, in case of an intestate estate, that a copy of the Letters of Administration has been sent to the distributees.

i. Whether any residuary beneficiary is under a disability.

j. That a receipt and waiver from each residuary beneficiary is attached in which each residuary distributee acknowledges that the estate has been properly distributed to him or her and that the statement is filed in lieu of a more detailed accounting.

k. TennCare Release.

In addition to the foregoing requirements, the Petition to close a decedent's estate shall have an attached release from the Bureau of TennCare of the Tennessee Department of Finance and Administration or, in the alternative, a statement that the decedent was under age 55 at the time of death. While the Court prefers the obtaining of the TennCare release, the Court may, upon application, waive the release upon a satisfactory showing that the decedent, at the time of death, was not enrolled in the TennCare program.

RULE XVII.

CLOSING GUARDIANSHIPS OF MINORS

Before final distribution of guardianship funds to a ward who has reached age 18, the ward shall testify in open court when the Interim Final Accounting

is submitted to the Court for confirmation. If the ward has not graduated from high school, the Judges will look with favor on an application to extend the guardianship or may extend the guardianship *sua sponté*, pending high school graduation or for other reasons in the discretion of the Court.

RULE XVIII.

INVESTING FUNDS PER COURT ORDER

1. The Probate Court Clerk will invest litigant’s funds paid into the Court only if there is a Court Order directing it to do so. Unless the Order provides otherwise, the Clerk shall determine in which institution the funds are to be invested and the nature of the investment. The Order should state the type of investment desired. At the time of payment or when the order is entered, if later, it will be the duty of the attorney seeking investment of the funds to specifically call to the attention of the Clerk that the funds are to be invested. The Clerk, upon distribution of the funds held by it, shall be paid a commission equal to 10% of the income realized from the account. If funds are to be held for less than thirty days, the Clerk will deposit them in its “funds not invested account.”

2. All orders directing the Probate Court Clerk to invest funds must require that there be furnished to the Clerk the applicable social security number or employment identification number of the person or entity responsible for the payment of taxes on the income produced by the investment.

RULE XIX.

PARTICIPANTS WITH DISABILITIES

Whenever a participant in the trial process may have a disability requiring special accommodation, the Clerk of the Court should be notified in order to allow the Court to comply with the letter and spirit of the Americans With Disabilities Act.

RULE XX.

ORDERS LEFT WITH JUDGE’S SECRETARY

1. Only Orders as indicated below (with copies to be attested included) may be left with a Judge’s secretary for submission to the Judge. If the Judge approves the Order by signing it, the Clerk shall attest the copies and hold them for pick-up by the attorney. No attested copies shall be released until all court costs associated with the Order are paid.

2. If the Judge declines to sign the Order, that fact shall be noted on the face of it and the Order shall be held for the attorney to pick up (in lieu of the attested copies). The attorney shall promptly confer with the Judge to address and resolve any deficiencies in the Order.

3. The following Orders may be presented in this manner:

- a. Orders disposing of claims or exceptions to claims.
- b. Orders substituting counsel.
- c. Consent orders of a very routine nature.

Shelby County

d. Orders appointing a Guardian Ad Litem or attorney ad litem when the Judge has indicated who is to be appointed, and orders re-appointing a Guardian Ad Litem when a subsequent matter necessitates re-appointment.

e. Orders setting the date for a hearing when the Judge or his secretary has advised the attorney of the setting date.

RULE XXI.

MUNIMENT OF TITLE AND SMALL ESTATE AFFIDAVIT

A Petition to Admit Will as Muniment of Title to real estate, pursuant to TENN. CODE ANN. § 32-2-111, and an Affidavit as to Small Estate, pursuant to § 30-4-101, may both be filed in the same decedent's estate whether or not simultaneously.

APPENDIX A**FORMS****PROBATE COURT CLERK'S WEBSITE FORMS**

The following forms are available on the Probate Clerk's website:

Accounting Form
Appointment of Secretary of State as Agent for Service of Process
Certification as to Notice of Accounting
Clerks Report on Accountings
Motion for Additional Time to File an Accounting
Order Confirming Accounting
Order Granting Additional Time to File an Accounting
Property Management Plan
Statement as to the Filing of United States or Tennessee Income Tax Return
Statement From Corporate Surety
Notice of Accounting
Statement of Fiduciary as to Physical or Mental Condition of Disabled Person
Claim Form
Fiduciary Information Sheet
General Notice of Hearing
Information for Requesting a Name Change
Inventory Form
Inventory Form for Guardianship/Conservatorship
Notice of Hearing - Conservatorship
Small Estate Affidavit
Notice of Hearing - Ward
Subpoena
TennCare Release Form
Waiver of Bond for Small Estate Affidavit

PROBATE COURT CLERK'S OFFICE FORMS

The following forms are available in the Probate Clerk's Office:

Notice of hearing on (Petition for Surviving Spouse to take Elective Share, Year's Support, etc.)
Receipt for Documentation
Summons in Civil Action
State of Tennessee Report of Property to Escheat
Executor's Bond
Administrator's Bond
Guardian's Bond
Conservator's Bond
Report of the Clerk (concerning insufficient assets in estate to pay debts)
Notice of Appearance of Counsel
Agreement Between Fiduciary and Financial Institution
Uniform Civil Affidavit of Indigence
Notice of Appeal
Contestant's Bond
Appeal Bond for Costs
Tennessee Department of Revenue Inheritance Tax Return
Application for Non-Resident Tax Waiver
Receipt for Filing Will
Notice to TennCare
Physician's Report of Physical, Psychological or Other Examination

**RULES REGULATING PRACTICE AND PROCEDURE
OF THE SHELBY COUNTY ENVIRONMENTAL COURT**

ADOPTED EFFECTIVE FEBRUARY 15, 2021

RULE.	RULE
I. SCOPE AND PURPOSE	IX. REFEREES
II. COURTROOM DECORUM	X. REHEARINGS
III. OPENING AND ADJOURNMENT OF COURT	XI. CONDUCT OF TRIALS
IV. SESSIONS	XII. DISCOVERY
V. OFFICE HOURS	XIII. APPEALS
VI. PLEADINGS	XIV. ALTERNATIVE DISPUTE RESOLUTION
VII. MOTION HEARINGS/TRIAL DATES	XV. NEIGHBORHOOD PERSEVERATION ACT (RECEIVERSHIP PROCEDURES)
VIII. ATTORNEYS	

Shelby County

**RULE I.
SCOPE AND PURPOSE**

These rules shall govern the practice and procedures in the Shelby County Environmental Court. In cases where this Court shares concurrent jurisdiction with Circuit and Chancery Court, the Tennessee Rules of Civil Procedure shall also apply. The Tennessee Rules of Evidence shall be applicable in all cases. The rules are intended to provide for the speedy, consistent, and just determination of every proceeding in Environmental Court. In the event of any apparent conflict in the procedural rules, the Tennessee Rules of Civil Procedure shall prevail where applicable. [Adopted February 15, 2021.]

**RULE II.
COURTROOM DECORUM**

The following standards of courtroom decorum and procedure shall be maintained:

- (a) The Judge and Referees shall wear judicial robes during sessions of the court, except when, in the discretion of the Judge, a matter before the Court is of such a nature as justifies an informal hearing.
- (b) All persons in the Courtroom will stand while the Court is being opened and also while the Court is being adjourned.
- (c) All persons shall rise at all times when addressing the Court.
- (d) All orders, judgments, and decrees will be handed to the Court through the Court's attendants, and lawyers will not approach the bench from the bar except when directed by the Judge.
- (e) There will be no smoking or chewing of gum in the Courtroom.
- (f) All lawyers and Court attendants will be appropriately dressed while in Court attendance.

(g) The Bailiff in attendance will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct and deportment. [Adopted February 15, 2021.]

RULE III.

OPENING AND ADJOURNMENT OF COURT

Upon the Judge or Referee entering the Courtroom preparatory to the formal opening of Court, the Bailiff will call the Courtroom to order, directing all in attendance before the Court to stand and will open Court in substantially the manner following:

“Hear Ye, Hear Ye, Hear Ye. This Honorable Shelby County Environmental Court is now open for the transaction of business pursuant to adjournment; all persons having business before this Court draw near, give attention, and you shall be heard. The Honorable Judge/Referee_____presiding. You may be seated.”

There upon the Judge or Referee will take the seat upon the bench and those in the Courtroom will be seated.

Upon the Court instructing the Bailiff to adjourn Court for the day, the Bailiff will direct all in attendance before the Court or in the Courtroom to stand, as will the Judge, and will adjourn Court in substantially the manner following:

“This Court now stands adjourned until tomorrow morning at ____ o’clock.” (or until a day certain) [Adopted February 15, 2021.]

RULE IV.

SESSIONS

The Shelby County Environmental Court shall convene at 9am daily except, Saturdays, Sundays, and government observed holidays. Only the Judge may authorize exceptions to this schedule. Unless the Judge directs otherwise, any case in which the Court has jurisdiction may be heard in the first instance by a Referee. [Adopted February 15, 2021.]

RULE V.

OFFICE HOURS

The office of the Clerk of Court shall be open for the regular transaction of business from 8:30 a.m. until 4:30 p.m. except on non-judicial days. [Adopted February 15, 2021.]

RULE VI.

PLEADINGS

All written pleadings, orders and judgments shall be on letter-sized paper and backed with the style of the cause. Each attorney, whether for the plaintiff or defendant, shall place his/her name, telephone number, and Tennessee Board of Professional Responsibility registration number on the jacket and on

all pleadings of each case in which he/she is an attorney. [Adopted February 15, 2021.]

RULE VII.

MOTION HEARINGS/TRIAL DATES

All motions shall be filed with the General Sessions Criminal Court Clerks’ Office and a separate copy provided to the parties and the Judge in chambers.
All motions and trial dates and times shall be specifically set by the Judge. [Adopted February 15, 2021.]

RULE VIII.

ATTORNEYS

A litigant, unless representing himself, must be represented by an attorney at law who holds a Tennessee law license. Out of state attorneys who are not licensed in this state, must associate local counsel in order to practice in this Court.
All attorneys licensed to practice law in Tennessee shall be allowed to appear in any matter coming before the Court. Every party to a proceeding who wishes to employ an attorney shall be given an opportunity to do so. The Court will appoint an attorney to represent any defendant who has a constitutional right to counsel and who is determined by the Court to be indigent.
Attorneys shall enter an appearance in a case in which they represent a party as counsel of record or have been appointed by the Court. Entering an appearance may be made by filing a pleading on behalf of a party, filing a formal notice of appearance or a written form notice filed with the Clerk and the attorney must sign the jacket when counsel first appears before the Court.
Attorneys of record shall represent the party throughout the proceedings until the case has been concluded or counsel has been allowed to withdraw by Court order upon written motion. [Adopted February 15, 2021.]

RULE IX.

REFEREES

The Judge may direct that any case or class of cases shall be heard in the first instance by the Referee in all cases wherein the Division XIV Court has jurisdiction. A Referee has the same authority as a trial judge to issue any and all process. The Referee in the conduct of proceedings has the power of a trial judge. [Adopted February 15, 2021.]

RULE X.

REHEARINGS

Any party may, within five (5) days after a case is heard by a Referee, excluding non-judicial days, file a request with the Court for a hearing by the Judge of Division XIV. The Judge may, on the Judge’s own motion, order a rehearing of any matter heard before a Referee, and shall allow a hearing if a

Shelby County

request for such hearing is filed as herein prescribed. Unless the Judge orders otherwise, the recommendation of the Referee shall be the decree of the Court pending hearing. [Adopted February 15, 2021.]

RULE XI.

CONDUCT OF TRIALS

Proceedings in this Court, shall be open to the general public. And no person within, without, or in the vicinity of the Environmental Court shall accost, solicit, or interfere in any way with any person on or about the premises of the Court or otherwise engage in any conduct which may tend to interrupt, disturb, or hinder the orderly conduct of the Court's business. [Adopted February 15, 2021.]

RULE XII.

DISCOVERY

The Court may allow discovery upon written motion by either party, being timely filed, and upon good cause shown. Any party may object to discovery by filing a response promptly after the filing of such motion. Failure to respond to a motion for discovery shall be considered consent to such motion. Discovery may then be allowed under such terms and conditions as the Court may prescribe. [Adopted February 15, 2021.]

RULE XIII.

APPEALS

An appeal of the Court's disposition may be perfected by filing a notice of appeal on a form provided by the Court within ten (10) days, excluding nonjudicial days, of the final disposition. The appeal period shall commence the day after the order of disposition is entered. All matters where the Court has concurrent jurisdiction with Circuit or Chancery Courts may be appealed to the Court of Appeals within 30 days of the entry of the final disposition order.

Any final orders or judgments in the following proceedings may be appealed to the Circuit Court:

- (a) Shelby County Traffic
- (b) Memphis Housing
- (c) Animal Cases
- (d) Fire
- (e) Litter/Illegal Dumping
- (f) Health Department
- (g) County Code.

Any final orders or judgments in the following proceedings may be appealed to the Criminal Court:

- (a) Hunting/Fishing
- (b) Criminal Littering
- (c) Highway Patrol Cases
- (d) Criminal animal Cases.

Any final orders or judgments in the following proceedings may be appealed to the Court of Appeals:

- (a) Public Nuisance
- (b) Neighborhood Preservation Act.

An appeal shall not operate as a stay, and the order of this Court shall remain in effect until or unless the Circuit, Criminal, Court of Appeals enters an order to the contrary. [Adopted February 15, 2021.]

RULE XIV.

ALTERNATIVE DISPUTE RESOLUTION

Prior to trial, the parties shall have the opportunity to fashion a resolution offered at no cost to the parties by the Shelby County Environmental Court during a Judicial Settlement Conference. Judicial Settlement Conferences can be requested by either party. [Adopted February 15, 2021.]

RULE XV.

NEIGHBORHOOD PERSEVERATION ACT (RECEIVERSHIP PROCEDURES)

(a) All persons, groups, businesses, or organization shall make application to the Court to be a Receiver as defined in Tenn. Code. Ann. § 13-6-102.

(b) Receiver means any certified person appointed by the Court for the purposes of preserving or improving the subject parcel as defined in Tenn. Code. Ann. 13-6-102.

(c) The Receiver shall complete the application made available on the Shelby County Environmental Court website.

(d) The Court will review the applications for the best Receiver for a particular property. The Court will consider capacity, ties to the property, and relationship to the community to determine the best Receiver. This is a case by case determination, and completely within the discretion of the Court.

(e) Upon completion of the work, the Receiver shall request the Court to approve a Receiver's Lien amount for the expenses the Receiver actually spent abating the nuisance property.

(f) The lien amount can include any and all direct and indirect expenses and costs incurred by the Receiver, including reasonable attorney's fees and costs. (Tenn. Code. Ann. § 13-6-102).

(g) The Court will review, modify where appropriate and approve the Receiver's Lien amount by Order of the Court. [Adopted February 15, 2021.]

Index to Local Rules of Shelby County

A

ABROGATION OF FORMER RULES,

Shelby Crim 2.

ACCOUNTINGS, Shelby Pro XI.

ACCOUNTS.

Opening and maintaining, Shelby Pro XII.

ADJOURNMENT OF COURT, Shelby

Chanc 1, Shelby GenSess Crim 3, Shelby Juv 3.

Environmental court, practice and procedure, Shelby Environ III.

ADMISSIONS.

Requests for admissions, Shelby Cir 12.

ADOPTION.

Petitions.

Hearings, Shelby Chanc 15.

AGREED ORDERS.

Civil matters before juvenile court, Shelby Juv 24.

ALIMONY.

Sworn statements, Shelby Cir 14.

Temporary alimony.

Motions, Shelby Cir 13.

ALTERNATIVE DISPUTE RESOLUTION.

Environmental court, practice and procedure, Shelby Environ XIV.

AMERICANS WITH DISABILITIES.

Notice of need for accommodation, Shelby Cir 26.

APPEALS.

Environmental court, practice and procedure, Shelby Environ XIII.

Notice of appeal, Shelby Juv 15.

Environmental court, practice and procedure, Shelby Environ XIII.

Procedure, Shelby Juv 15.

Record on appeal, Shelby Chanc 21.

APPEARANCES.

Attorney appearance, Shelby Cir 15.

Environmental court, practice and procedure, Shelby Environ VIII.

Courtroom decorum, Shelby Cir 1.

Juvenile cases, Shelby Juv 8.

ARGUMENTS, Shelby Chanc 16.

ARREST WARRANTS.

Domestic violence.

Electronic arrest warrants, Shelby GenSess Crim 11.

ASSIGNMENT OF CASES, Shelby Chanc 7,

Shelby Cir 4, Shelby Pro VI.

Criminal cases, Shelby Crim 4.

ASSIGNMENT OF CASES —Cont'd

General sessions courts, Shelby GenSess Civ 12.

ATTORNEYS AD LITEM.

Appointment.

Leaving orders with judge's secretary, Shelby Pro XX.

ATTORNEYS AT LAW, Shelby Juv 8.

Addressing of court.

Announcing docket number of case, Shelby GenSess Crim 4.

Admission to practice, Shelby Chanc 2, Shelby Pro II.

Appearances.

Environmental court, practice and procedure, Shelby Environ VIII.

Appointment.

Juvenile cases, Shelby Juv 20.

Child custody.

Private attorney process for filing petition, Shelby Juv Appx.

Conferring with clients, Shelby GenSess Crim 4.

Counsel of record, Shelby GenSess Crim 4.

Courtesy.

Guidelines for professional courtesy and conduct, Shelby Chanc 1.

Criminal cases, Shelby Crim 5.

Dependency cases.

Private attorney process for filing petition, Shelby Juv Appx.

Fees, Shelby Pro XIII.

General information for attorneys, Shelby Pro II.

Hats, newspapers and magazines.

Leaving on tables in courtroom, Shelby GenSess Crim 4.

Jacket of case.

Attorney must have in court, Shelby GenSess Crim 4.

Neglect cases.

Private attorney process for filing petition, Shelby Juv Appx.

Out of state attorneys.

Association of Tennessee counsel, Shelby GenSess Civ 7.

Parties, Shelby Cir 21.

Professional courtesy and conduct guidelines, Shelby Chanc 2.

Qualifications.

Environmental court, practice and procedure, Shelby Environ VIII.

Special settings in probate court.

Duties of attorney as to, Shelby Pro VIII.

Substitution of counsel, orders.

Leaving orders with judge's secretary, Shelby Pro XX.

ATTORNEYS AT LAW —Cont'd**Visitation.**

Private attorney process for filing petition,
Shelby Juv Appx.

Withdrawal of counsel, Shelby Chanc 2,
Shelby GenSess Crim 4, Shelby Juv 8.

ATTORNEYS' FEES.

Decedents estates, Shelby Pro XIII.

Setting fees.

Court's setting of fees, Shelby Cir 20.

AUDIO RECORDING EQUIPMENT.

Courtroom decorum, Shelby Chanc 1.

B**BONDS.**

Bail bond companies, Shelby Crim 7.

Felony bonds, Shelby GenSess Crim 6.

BRIEFS.

General provisions, Shelby Chanc 16.

Motions.

Dispositive motions submitted by brief,
Shelby Cir 6.

Memoranda briefs, Shelby Chanc 10.

Nondispositive motions submitted by brief,
Shelby Cir 5.

C**CALENDAR.****Dropped cases.**

Returning to calendar, Shelby GenSess Civ
14.

Jury and nonjury cases, Shelby Cir 4.

Order of business, Shelby Chanc 3.

Posting daily calendar, Shelby GenSess
Civ 10.

CAMERAS.

Courtroom decorum, Shelby Chanc 1.

CELL PHONES.

Courtroom decorum, Shelby Pro I.

Electronic devices, Shelby Chanc 1.

CERTIFICATES OF READINESS.

Juvenile cases, Shelby Juv 21.

CHANCELLOR.

Disqualification, Shelby Chanc 24.

**CHILD AND FAMILY TEAM
CONFERENCES.**

Juvenile cases, Shelby Juv 23.

CHILD CUSTODY.

Agreed orders, Shelby Juv 24.

Divorce or separate maintenance trials.

Permanent parenting plan with child
support worksheet presented to court,
Shelby Chanc 14.

CHILD CUSTODY —Cont'd

Juvenile cases, Shelby Juv 17.

Delinquency cases.

Custody ordered to children's services
department.

Language included in decree, Shelby
Juv 14.

Parenting plan, Shelby Cir 14.

**Private attorney process for filing
petition**, Shelby Juv Appx.

Sworn statement, Shelby Cir 14.

CHILD SUPPORT.**Divorce or separate maintenance trials.**

Permanent parenting plan with child
support worksheet presented to court,
Shelby Chanc 14.

Enforcement.

Agreement relative to child support
enforcement, Shelby Cir Appx 2.

Motions, Shelby Cir 13.

Sworn statements, Shelby Cir 14.

CLASS ACTIONS.**Mass tort litigation.**

Pretrial procedures.

Coordinating judge handling, Shelby Cir
28.

CLERK AND MASTER'S OFFICE.

Investing funds per court order, Shelby
Chanc 23.

CLERKS OF COURT.**Addresses and telephone numbers.**

Keeping clerk advised, Shelby Cir 17.

Deputy clerks.

Attendance at sessions, Shelby GenSess Civ
8.

Investment of funds, Shelby Cir 18.

Office hours, Shelby Juv 5.

Environmental court, practice and
procedure, Shelby Environ V.

Probate court.

Forms available from clerk's website or
clerk's office, Shelby Pro Appx A.

**CODE OF PROFESSIONAL
RESPONSIBILITY.**

Rules of professional conduct adopted,
Shelby Crim 1.

COMPLEX CASES.

Notice of complex cases, Shelby Cir 24.

CONSENT JUDGMENTS, Shelby GenSess
Civ 5.

CONSENT ORDERS, Shelby Cir 11.

Leaving orders with judge's secretary,
Shelby Pro XX.

CONSOLIDATION OF CASES, Shelby Cir
22.

CONTINUANCES, Shelby GenSess Civ 6.
Juvenile cases, Shelby Juv 18.

CONTINUANCES —Cont'd**Trial**, Shelby Chanc 25.**COPIES OF GENERAL SESSIONS****RULES**, Shelby GenSess Civ 1.**COURT INTERPRETERS.****Notice of need for court interpreters**,
Shelby Cir 27.**COURT RECORDINGS**, Shelby Crim 6.**COURT RECORDS**, Shelby Cir 8.**COURTROOM DECORUM**, Shelby Juv 2.**Adjournment of court**, Shelby Chanc 1,
Shelby GenSess Civ 11, Shelby GenSess
Crim 3, Shelby Juv 3, Shelby Pro I.**Appearances**, Shelby Cir 1.**Approaching the bench**, Shelby GenSess
Crim 3.**Attire.**Environmental court, practice and
procedure, Shelby Environ II.**Attorneys.**

Conduct and appearance, Shelby Cir 1.

Behavior, Shelby Cir 1, Shelby Juv 2.**Calling court to order**, Shelby Cir 1, Shelby
Juv 3.**Closing of court**, Shelby Chanc 1, Shelby
Crim 8, Shelby Pro I.**Conversations**, Shelby Crim 8, Shelby
GenSess Crim 4.**Criminal cases**, Shelby Crim 8.**Eating in court**, Shelby Cir 1.**Electronic devices**, Shelby Chanc 1.**Environmental court, practice and
procedure**, Shelby Environ II.**Flag**, Shelby Crim 8.**Guidelines for professional courtesy and
conduct**, Shelby Cir Appx 1.**Gum chewing.**Environmental court, practice and
procedure, Shelby Environ II.
Prohibition, Shelby Cir 1.**Opening of court**, Shelby Chanc 1, Shelby
Crim 8, Shelby GenSess Crim 3, Shelby
Juv 3, Shelby Pro I.**Places for standing and sitting**, Shelby
Crim 8.**Professional courtesy**, Shelby Chanc 1.**Proper attire**, Shelby Chanc 1, Shelby
GenSess Civ 11, Shelby GenSess Crim 3,
Shelby Pro I.**Reading in courtroom**, Shelby Cir 1.**Recording equipment.**

Prohibited, Shelby Cir 1.

Robes.Wearing of judicial robes, Shelby GenSess
Civ 11, Shelby GenSess Crim 3.**Sheriffs.**Responsibilities, Shelby GenSess Civ 11,
Shelby GenSess Crim 3.**COURTROOM DECORUM —Cont'd****Smoking in courtroom prohibited**, Shelby
Chanc 1, Shelby Cir 1, Shelby GenSess
Civ 11, Shelby GenSess Crim 3, Shelby
Juv 2, Shelby Pro I.Environmental court, practice and
procedure, Shelby Environ II.**Space within the rail**, Shelby GenSess Civ
11, Shelby GenSess Crim 3.**COURTROOM SECURITY**, Shelby Cir 19.**D****DECEDENTS' ESTATES.****Affidavits.**Timely filing by personal representative,
Shelby Pro XV.**Closing estates**, Shelby Pro XVI.**Inventory**, Shelby Pro X.**Petition to open**, Shelby Pro V.**DECREES**, Shelby Chanc 17, Shelby Juv 14.**Preparation**, Shelby Chanc 17, Shelby Juv
14.**Presentation**, Shelby Chanc 17.**DELINQUENCY CASES.****Decrees.**Custody ordered to children's services
department.Language included in decree, Shelby Juv
14.**Restitution**, Shelby Juv 22.**DEPENDENCY.****Agreed orders**, Shelby Juv 24.**Preliminary hearings**, Shelby Juv 19.**Private attorney process for filing
petition**, Shelby Juv Appx.**DISABLED PERSONS.****Litigants or witnesses with disabilities**,
Shelby Pro XIX.**Notice of need for accommodation**, Shelby
Cir 26.**DISCOVERY**, Shelby Chanc 26, Shelby Cir
12.**Environmental court, practice and
procedure**, Shelby Environ XII.**Limitations**, Shelby Juv 10.**Mass tort litigation.**

Pretrial procedures.

Coordinating judge handling, Shelby Cir
28.**DISMISSAL OF CASES.****Lack of prosecution**, Shelby Chanc 22.**DIVORCE.****Alimony.**

Sworn statement, Shelby Cir 14.

Children involved.

Parenting plan, Shelby Cir 14.

DIVORCE —Cont'd

Contested divorce, Shelby Cir 14.

Decree.

Modification, Shelby Cir 14.

Irreconcilable differences, Shelby Cir 14.

Motions.

Domestic relations cases, Shelby Cir 13.

Parenting plan, Shelby Cir 14.

Trials, Shelby Chanc 14.

Unconditional divorces, Shelby Cir 14.

Uncontested divorce, Shelby Cir 14.

DOCKETS, Shelby Chanc 13, Shelby

GenSess Crim 2.

Assignment of cases, Shelby Chanc 7.

Motion docket, Shelby Chanc 10, Shelby Cir 5.

Ten-day-rule docket, Shelby Chanc 13.

DOMESTIC VIOLENCE.

Arrest warrants.

Electronic arrest warrants, Shelby GenSess Crim 11.

Protection orders.

Ex parte orders.

Electronic signatures.

Procedures for using, Shelby GenSess Crim 9.

Issuance.

Proceedings when appearance occurs by means of computer, videoconferencing or other electronic means, Shelby GenSess Crim 10.

E

ELECTIVE SHARE OF SURVIVING

SPOUSE, Shelby Pro XIV.

ELECTRONIC APPEARANCES.

Protection orders.

Ex parte orders.

Issuance.

Proceedings when appearance occurs by means of computer, videoconferencing or other electronic means, Shelby GenSess Crim 10.

ELECTRONIC ARREST WARRANTS.

Domestic violence, Shelby GenSess Crim 11.

ELECTRONIC FILING OF PLEADINGS AND OTHER PAPERS, Shelby Chanc

18, Shelby Chanc Appx 1, Shelby Cir 3, Shelby Cir Appx 3.

ELECTRONIC SIGNATURES.

Procedures for using, Shelby GenSess Crim 9.

ENGLISH LANGUAGE.

Limited English proficient persons.

Interpreters.

Notice of need for court interpreters, Shelby Cir 27.

ENVIRONMENTAL COURT, Shelby

Environ I to Shelby Environ XV.

ERRORS.

Effect, Shelby Juv 11.

EXCEPTIONS.

Unnecessary, Shelby Juv 11.

EXHIBITS.

Court records.

Management, retention, etc, Shelby Cir 8.

Juvenile cases.

Certificates of readiness.

Witness list and exhibit list as part of certificate, Shelby Juv 21.

EX PARTE COMMUNICATIONS WITH JUDGE, Shelby Cir 15.

F

FORMER RULES ABROGATED, Shelby Crim 2.

G

GARNISHMENT.

Stay of execution by garnishment.

Motion to stay, Shelby GenSess Civ 4.

GUARDIAN AD LITEM.

Appearances.

Juvenile cases, Shelby Juv 8.

Appointment, Shelby Chanc 9, Shelby Pro VII.

Leaving orders with judge's secretary, Shelby Pro XX.

GUARDIANS.

Closing estate of guardianships.

Petition and order in lieu of final settlement, Shelby Pro XVII.

H

HEARINGS.

Motion hearings.

Environmental court, practice and procedure, Shelby Environ VII.

Petitions for adoption, Shelby Chanc 15.

Special settings, Shelby Pro VIII.

Ten-day rule, Shelby Chanc 13.

HOMESTEAD.

Petitions for homestead, elective share and year's support, Shelby Pro XIV.

I

INDIGENT PERSONS.

Civil actions.

Proceeding without security.

Affidavit of indigence, Shelby GenSess Civ 15.

INJUNCTIONS.

- Motions to modify or dissolve**, Shelby Chanc 11.
- Temporary injunction hearings**, Shelby Chanc 11.

INTERPRETERS.

- Notice of need for court interpreters**, Shelby Cir 27.

- INTERROGATORIES**, Shelby Chanc 26, Shelby Cir 12.

INVESTMENT.

- Funds per court order**, Shelby Chanc 23, Shelby Pro XVIII.

J

JUDGES.

- Robes during sessions of court.**
 - Environmental court, practice and procedure, Shelby Environ II.

JUDGMENTS.

- Alteration or amendment.**
 - Motion, Shelby Cir 7.
- Consent judgments**, Shelby GenSess Civ 5.
- Installment payment.**
 - Motions to set, Shelby GenSess Civ 4.
- Paper, size, content**, Shelby GenSess Civ 2.

- JUDICIAL COMMISSIONERS**, Shelby GenSess Crim 8.

JURY.

- Trials**, Shelby Chanc 20.

- JUVENILE RULES**, Shelby Juv 1 to Shelby Juv 25.

- JUVENILE STATUS REPORT**, Shelby Juv Appx.

L

LIMITED ENGLISH PROFICIENT PERSONS.

- Interpreters.**
 - Notice of need for court interpreters, Shelby Cir 27.

M

MASS TORT LITIGATION.

- Pretrial procedures.**
 - Coordinating judge handling, Shelby Cir 28.

MASTER.

- Reference to master**, Shelby Chanc 12.
- Reports**, Shelby Chanc 17.

MEDIATION.

- Juvenile cases**, Shelby Juv 16.
- Referrals to mediation, Shelby Juv 18.

- MOTION DAYS**, Shelby Chanc 10.

MOTIONS.

- Alimony.**
 - Temporary alimony, Shelby Cir 13.
- Child support**, Shelby Cir 13.
- Dispositive motions**, Shelby Cir 6.
- Dockets**, Shelby Chanc 10.
- Domestic relations**, Shelby Cir 13.
- Environmental court, practice and procedure**, Shelby Environ VII.
- Form**, Shelby Chanc 10.
- Injunctions.**
 - Modification or dissolution of injunctions, Shelby Chanc 11.

Judgments.

- Alteration or amendment, Shelby Cir 7.
- Juvenile cases**, Shelby Juv 20.
- Mass tort litigation.**
 - Pretrial procedures.
- Coordinating judge handling, Shelby Cir 28.

- Memoranda briefs**, Shelby Chanc 10.
- Motion days**, Shelby Chanc 10.
- Motion to dismiss**, Shelby Cir 6.
- New trial**, Shelby Chanc 19, Shelby Cir 7.
- Nondispositive motions**, Shelby Cir 5.
- Rehearing**, Shelby Pro VIII.
- Summary judgment**, Shelby Cir 6.

N

NEGLECT.

- Agreed orders**, Shelby Juv 24.
- Preliminary hearings**, Shelby Juv 19.
- Private attorney process for filing petition**, Shelby Juv Appx.

NEIGHBORHOOD PRESERVATION ACT.

- Environmental court, practice and procedure.**
 - Receivership, Shelby Environ XV.

NEW TRIAL.

- Motions**, Shelby Chanc 19, Shelby Cir 7.

NONRESIDENT ATTORNEYS.

- Criminal cases**, Shelby Crim 5.

O

- OPENING OF COURT**, Shelby Chanc 1, Shelby Crim 8, Shelby GenSess Crim 3, Shelby Juv 3, Shelby Pro I.

- Environmental court, practice and procedure**, Shelby Environ III.

- ORDER OF BUSINESS**, Shelby Chanc 3.

- ORDERS**, Shelby Chanc 17, Shelby Cir 10, Shelby Juv 14.

Agreed orders.

- Civil matters before juvenile court, Shelby Juv 24.

- Consent orders**, Shelby Cir 11.

Divorces.

- Parenting plan, Shelby Cir 14.

ORDERS —Cont'd**Entry**, Shelby Cir 10.**Investing funds per court order**, Shelby Pro XVIII.**Leaving with judge's secretary**, Shelby Pro XX.**Paper, size, content**, Shelby GenSess Civ 2.**Preparation**, Shelby Chanc 17.**Presentation**, Shelby Chanc 17, Shelby Cir 10.**Restraining orders.**

Juvenile cases, Shelby Juv 25.

Service, Shelby Cir 10.**P****PARENTING PLAN.****Divorces involving children**, Shelby Cir 14.**Juvenile cases**, Shelby Juv 16.**PARTIES.****Agreed orders.**

Civil matters before juvenile court, Shelby Juv 24.

Attorneys as parties, Shelby Cir 21.**PATERNITY CASES.****Agreed orders**, Shelby Juv 24.**Petitions to establish parentage**, Shelby Juv 17.**PERSONAL PROPERTY.****Possession, writs of.**

Affidavits, Shelby GenSess Civ 13.

PERSONAL REPRESENTATIVES.**Accountings**, Shelby Pro XI.**Affidavits.**

Timely filing by personal representative, Shelby Pro XV.

Fees, Shelby Pro XIII.**PLEADINGS**, Shelby Juv 6.**Environmental court, practice and procedure**, Shelby Environ VI.**Filing**, Shelby Chanc 5, Shelby Cir 3, Shelby Pro IV.

Electronic filing, Shelby Chanc 18, Shelby Chanc Appx 1, Shelby Cir 3, Shelby Cir Appx 3.

Form, Shelby Chanc 4, Shelby Pro IV.**Paper, size, content**, Shelby GenSess Civ 2.**Special settings**, Shelby Pro VIII.**Style of pleadings**, Shelby Crim 3.**Time.**

Extension of time, Shelby Chanc 6.

POSSESSION, WRITS OF.**Affidavits**, Shelby GenSess Civ 13.**PRIVATE PROBATION COMPANIES,**

Shelby Crim 10, Shelby GenSess Crim 7.

PRIVATE PROCESS SERVERS, Shelby Cir 25.**PROBATION.****Private probation companies**, Shelby Crim 10, Shelby GenSess Crim 7.**PRODUCTION OF DOCUMENTS AND THINGS.****Requests for production.**

Responses, Shelby Cir 12.

PROFESSIONAL COURTESY AND CONDUCT.**Guidelines**, Shelby Cir Appx 1.**PRO SE APPEARANCE**, Shelby Chanc 2.**Decorum in court**, Shelby GenSess Crim 4.**Environmental court, practice and procedure**, Shelby Environ VIII.**PROTECTION ORDERS.****Ex parte orders.**

Electronic signatures.

Procedures for using, Shelby GenSess Crim 9.

Issuance.

Proceedings when appearance occurs by means of computer, videoconferencing or other electronic means, Shelby GenSess Crim 10.

PURPOSE OF RULES, Shelby Juv 1.**Environmental court, practice and procedure**, Shelby Environ I.**R****RECEIVERS.****Neighborhood preservation act.**

Environmental court, practice and procedure, Shelby Environ XV.

RECORDS.**Appeals**, Shelby Chanc 21.**Court records**, Shelby Cir 8.**RECUSAL OF JUDGE.****Transfer of cases**, Shelby Cir 23.**REFEREE.****Divorce referee.**

Domestic relations.

Motion before divorce referee, Shelby Cir 13.

Reference to, Shelby Chanc 12.

Environmental court, practice and procedure, Shelby Environ IX.**Rehearings of matters heard by referee**, Shelby Juv 13.**REHEARING.****Environmental court, practice and procedure**, Shelby Environ X.**Matters heard by referee**, Shelby Juv 13.**Petitions for rehearing**, Shelby Juv 12.**RESTITUTION.****Delinquency cases**, Shelby Juv 22.**RESTRAINING ORDERS.****Juvenile cases**, Shelby Juv 25.**RULES OF CIVIL PROCEDURE.****Applicability to probate proceedings**, Shelby Pro III.

RULES OF CRIMINAL PROCEDURE.**Adoption**, Shelby Crim 6.**RULES OF EVIDENCE.****Applicability to probate proceedings**,
Shelby Pro III.**RULES OF PROFESSIONAL CONDUCT.****Applicability**, Shelby Crim 1.**S****SCHEDULE OF COURT**, Shelby GenSess
Civ 9.**SCOPE OF RULES**, Shelby Juv 1.**Environmental court, practice and
procedure**, Shelby Environ I.**SEPARATE MAINTENANCE.****Trials**, Shelby Chanc 14.**SERVICE OF PROCESS.****General provisions**, Shelby Chanc 8.**Private process servers**, Shelby Cir 25.**SESSIONS OF COURT**, Shelby Cir 2,
Shelby GenSess Civ 9, Shelby GenSess
Crim 1, Shelby Juv 4.**Environmental court, practice and
procedure**, Shelby Environ IV.**SETTLEMENTS.****Environmental court, practice and
procedure.**Alternative dispute resolution during
judicial settlement conference, Shelby
Environ XIV.**SHERIFFS.****Deputy sheriffs.**Attendance at sessions, Shelby GenSess Civ
8.**SMALL ESTATE AFFIDAVITS.****Filing**, Shelby Pro XXI.**SPECIAL SETTINGS**, Shelby Pro VIII.**STIPULATIONS**, Shelby Cir 9.**SUBPOENAS**, Shelby Juv 7.**SUMMARY JUDGMENT.****Motions**, Shelby Cir 6.**SUMMONS.****Filing**, Shelby GenSess Civ 3.**SURVIVING SPOUSES.****Elective shares**, Shelby Pro XIV.**Homestead**, Shelby Pro XIV.**Year's support**, Shelby Pro XIV.**T****TEN-DAY-RULE DOCKET**, Shelby Chanc
13.**TIME.****Convening of divisions of court**, Shelby
GenSess Crim 1.**TRANSFER OF CASES**, Shelby Cir 23,
Shelby GenSess Civ 12, Shelby GenSess
Crim 5.**TRIALS.****Assignment of cases**, Shelby Chanc 7,
Shelby Pro VI.**Complex cases.**

Notice of complex cases, Shelby Cir 24.

Conduct, Shelby Juv 9.Environmental court, practice and
procedure, Shelby Environ XI.**Consolidation of cases**, Shelby Cir 22.**Continuances**, Shelby Chanc 25.**Dates.**Environmental court, practice and
procedure, Shelby Environ VII.**Divorce trials**, Shelby Chanc 14.**Jury trials**, Shelby Chanc 20.**Motions**, Shelby Chanc 19.**New trial.**

Motions, Shelby Chanc 19.

Notice of trial dates, Shelby Cir 16.**Order of business**, Shelby Chanc 3.**Separate maintenance trials**, Shelby
Chanc 14.**Setting of cases**, Shelby Crim 3.Leaving orders with judge's secretary,
Shelby Pro XX.**Transfer of cases**, Shelby Cir 23.**V****VIDEO.****Courtroom decorum**, Shelby Chanc 1.**VIDEOCONFERENCING.****Protection orders.**

Ex parte orders.

Issuance.Proceedings when appearance occurs by
means of computer,
videoconferencing or other
electronic means, Shelby GenSess
Crim 10.**VISITATION.****Juvenile cases**, Shelby Juv 17.**Private attorney process for filing
petition**, Shelby Juv Appx.**W****WAIVER OF RULES**, Shelby Crim 9.**WILLS.****Muniments of title.**Petition to admit will as muniment of title,
Shelby Pro XXI.**Probate, admission**, Shelby Pro V.**WITHDRAWAL OF COUNSEL**, ShelbyChanc 2, Shelby Cir 15, Shelby GenSess
Crim 4, Shelby Juv 8.

WITNESSES, Shelby Pro IX.

Juvenile cases.

Certificates of readiness..

Witness list and exhibit list as part of
certificate, Shelby Juv 21.

Persons with disabilities, Shelby Pro XIX.

Y

YEAR'S SUPPORT, Shelby Pro XIV.

